

Briefing Paper: Cross-border EU healthcare directive

England and Wales



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'if you are entitled to it here, then you can get it there.'

Introduction

The EU Directive on cross-border healthcare¹ came into effect in England and Wales on 25 October 2013². In essence the Directive allows patients in those jurisdictions the right to seek access to treatment in another country in the European Economic Area (EEA) in either the private or state healthcare sectors. Patients will be reimbursed for the actual cost of the treatment.

The aim of the Directive is to:

- Clarify and simplify the rules and procedures to ensure patients in England and Wales can access cross-border healthcare
- Increase treatment options for patients
- Provide patients in England and Wales with information on their rights
- Ensure that cross-border healthcare is safe and of high-quality
- Promote co-operation between member states.

Patients who need care, including emergency care when in Europe have access to the European Health Insurance Card (EHIC).

How does the Directive work?

Once a patient has been assessed and as needing treatment and would be eligible to have that treatment in England and Wales they have the right to obtain this treatment in another EU member state, either privately or in the state sector.

¹ DIRECTIVE 2011/24/EU <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0045:0065:EN:PDF>

² The National Health Service (Cross-Border Healthcare) Regulations 2013

The patient at this point is stepping outside the NHS England and Local Health Boards in Wales system and taking individual responsibility for the service that they obtain. Patients are advised to have medical insurance cover in the event of an emergency associated with the planned treatment as well as a valid EHIC card for emergency treatment not related to the planned treatment.

Patients will pay the treatment costs directly to the provider and NHS England or the Local Health Board in Wales will reimburse the patient for the actual cost of the treatment or the equivalent cost of treatment locally, whichever is the lesser. No other costs will be met, including travel.

Patients can contact their National Contact Point (NCP)³ in advance of travelling to determine whether they need prior authorisation. 3 areas have been identified:

1. The treatment involves at least one night stay in hospital and requires the use of specialised and cost intensive medical equipment
2. The treatment has commissioning restrictions applied or is highly specialised⁴
3. Post-operative clinical care will be required

NHS England or the Local Health Board in Wales can refuse authorisation if the treatment in question, or the healthcare provider in question could present a risk to the patient. If the medical treatment can be provided at home within a '*medically justifiable time limit*,' authorisation can be refused. However NHS England or the Local Health Board in Wales would need to explain the reason for the refusal.

What does this mean for clinicians in England and Wales?

For patients from England and Wales wishing to avail of cross-border healthcare

The Department of Health in England has stated that under the Directive, clinicians whose patient undertakes treatment abroad and suffers harm cannot be held liable for any failures in treatment organised by the patient and undertaken in another country.

³ <http://www.nhs.uk/NHSEngland/Healthcareabroad/plannedtreatment/Pages/Introduction.aspx>

⁴ See Appendix 1

The role of clinicians in respect of the Directive is to assist their patients to exercise the choice they have to access cross-border healthcare.

Legal advice sought by BMA in relation to GPs confirms that a GP (in England and Wales) *“could not be held directly responsible for negligent treatment administered by a wholly independent healthcare provider in another state of the Union.”* If a patient suffers harm as a result of cross-border treatment the responsibility for any remedy lies within the jurisdiction of that member state. Patients must also bear in mind the different regulatory and diverse frameworks in member states.

There may be challenges for consultants and GPs in delivering pre and post-op treatment care for their patients if they choose to have treatment in another country. However the Directive also states that patients are entitled to receive the same medical aftercare regardless of where the treatment took place.

The NCP in England and Wales is responsible for providing information to patients on services, interventions and treatment as well as the quality and safety of healthcare in a particular EU member state.

For clinicians treating patients from outside the UK

Patients in other member states have also the same rights to seek assessments and treatment in England and Wales under this Directive. However the Directive does not require providers to accept visiting patients for planned healthcare if this would be a detriment to their own patients with similar health needs nor to prioritise them. If a provider refuses to treat visiting patients they will need to explain the reasons and provide evidence that the refusal was necessary and non-discriminatory to other nationals from member states.

The NCPs in their respective member states will be responsible for providing the necessary information on services available in England and Wales.

Other mechanisms for accessing cross-border healthcare

In addition to the Directive there are two additional avenues that can be used for patients who are travelling outside England and Wales:

1. Extra Contractual Referral (ECR)

A consultant will be able to request that a patient requires assessment or treatment outside England and Wales which is considered necessary and not available in NHS England or the Local Health Board in Wales facilitates locally. This is usually to a provider elsewhere in the UK but can also be outside the UK if clinically justified. GPs are not able to refer patients to providers outside England and Wales. The main difference for ECR is that this is organised, funded and planned by the NHS England or the Local Health Board in Wales.

2. Treatment under S2 or E112

An individual can seek access to state-funded treatment in another EU country if they have been assessed as requiring treatment that is not available locally or within a medically/clinically appropriate time period. The patient must apply to NHS England or the Local Health Board in Wales and a clinical report from their consultant on headed paper must accompany the application.

The host country does not have to accept the patient and they cannot expect to receive preferential treatment. Where an S2 or E112 has been approved by NHS England or the Local Health Board in Wales, they will undertake to book flights etc. and reimburse for other travelling and subsistence expenses. The cost of the treatment will be paid through an overseas team in Newcastle at national level. However there may be some elements of care that will not be covered by NHS England or the Local Health Board in Wales.

Other aspects of the Directive

- Healthcare providers must make a medical record of the treatment and provide the patient with this record
- Recognition of prescriptions and a minimum list of elements to be included in a cross-border prescription

- The development of European Reference Networks (ERNs) of healthcare providers and centres of expertise, in particular in areas of rare diseases.

Appendix 1 List of services subject to prior authorisation

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| Adult ataxia telangiectasia services | Adult congenital heart disease services | Adult highly specialist pain management services |
| Adult highly specialist respiratory services | Adult highly specialist rheumatology services | Adult secure mental health services |
| Adult specialist cardiac services | Adult specialist eating disorder services | Adult specialist endocrinology services |
| Adult specialist intestinal failure services | Adult specialist neurosciences services | Adult specialist ophthalmology services |
| Adult specialist orthopaedic services | Adult specialist pulmonary hypertension services | Adult specialist renal services |
| Adult specialist services for patients infected with HIV | Adult specialist vascular services | Adult thoracic surgery services |
| Alkaptonuria service | Alström syndrome service | Ataxia telangiectasia service for children |
| Autoimmune paediatric gut syndromes service | Autologous intestinal reconstruction service for adults | Bardet-Biedl syndrome service |
| Barth syndrome service | Beckwith-Wiedemann syndrome with macroglossia service | Behcet's syndrome service |
| Bladder exstrophy service | Blood and marrow transplantation services | Bone anchored hearing aid services |

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| Breast radiotherapy injury rehabilitation service | Child and adolescent mental health services – Tier 4 | Choriocarcinoma service |
| Chronic pulmonary aspergillosis service | Cleft lip and palate services | Cochlear implantation services |
| Complex Ehlers Danlos syndrome service | Complex neurofibromatosis type 1 service | Complex spinal surgery services |
| Complex tracheal disease service | Congenital hyperinsulinism service | Cryopyrin associated periodic syndrome service |
| Cystic fibrosis services | Diagnostic service for amyloidosis | Diagnostic service for primary ciliary dyskinesia |
| Diagnostic service for rare neuromuscular disorders | Encapsulating peritoneal sclerosis treatment service | Epidermolysis bullosa service |
| Ex-vivo partial nephrectomy service | Fetal medicine services | Gender identity development service for children and adolescents |
| Gender identity disorder services | Highly specialist adult urinary and gynaecological surgery services | Highly specialist allergy services |
| Highly specialist colorectal surgery services | Highly specialist dermatology services | Highly specialist metabolic disorder services |
| Highly specialist pain management services for children and young people | Highly specialist palliative care services for children and young people | Highly specialist services for adults with infectious diseases |
| Hyperbaric oxygen treatment services | Insulin-resistant diabetes service | Islet transplantation service |
| Lymphangiomyomatosis service | Lysosomal storage disorder service | Major trauma services |

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| McArdle's disease service | Mental health service for deaf children and adolescents | Middle ear implantable hearing aid services |
| Neurofibromatosis type 2 service | Neuromyelitis optica service | Neuropsychiatry services |
| Ophthalmic pathology service | Osteo-odonto-keratoprosthesis service for corneal blindness | Paediatric intestinal pseudo-obstructive disorders service |
| Pancreas transplantation service | Paroxysmal nocturnal haemoglobinuria service | Positron Emission Tomography – Computed Tomography services |
| Primary ciliary dyskinesia management service | Primary malignant bone tumours service | Pseudomyxoma peritonei service |
| Pulmonary hypertension service for children | Pulmonary thromboendarterectomy service | Radiotherapy services |
| Retinoblastoma service | Secure forensic mental health service for young people | Severe acute porphyria service |
| Severe combined immunodeficiency and related disorders service | Severe intestinal failure service | Severe obsessive compulsive disorder and body dysmorphic disorder service |
| Specialist burn care services | Specialist cancer services | Specialist cancer services for children and young people |
| Specialist dentistry services for children and young people | Specialist ear, nose and throat services for children and young people | Specialist endocrinology and diabetes services for children and young people |

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| Specialist gastroenterology, hepatology and nutritional support services for children and young people | Specialist genetic services | Specialist gynaecology services for children and young people |
| Specialist haematology services for children and young people | Specialist haemoglobinopathy services | Specialist immunology services for patients with deficient immune systems |
| Specialist mental health services for deaf adults | Specialist neonatal care services | Specialist neuroscience services for children and young people |
| Specialist orthopaedic surgery services for children and young people | Specialist paediatric intensive care services | Specialist paediatric liver disease service |
| Specialist perinatal mental health services | Specialist plastic surgery services for children and young people | Specialist rehabilitation services for patients with highly complex needs |
| Specialist renal services for children and young people | Specialist respiratory services for children and young people | Specialist rheumatology services for children and young people |
| Specialist services for children and young people with infectious diseases | Specialist services for complex liver, biliary and pancreatic diseases in adults | Specialist services for haemophilia and other related bleeding disorders |
| Specialist services for severe personality disorder in adults | Specialist services to support patients with complex physical disabilities | Specialist surgery for children and young people |
| Specialist urology services for children and young people | Spinal cord injury services | Stickler syndrome diagnostic service |

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| Vein of Galen malformation service | Veterans' post traumatic stress disorder programme | Wolfram syndrome service |
| Xeroderma pigmentosum service | | |