

## Briefing Paper: Cross-border EU healthcare directive

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### England and Wales



## **Briefing Paper: Cross-border EU healthcare directive**

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

### **Introduction**

The EU Directive on cross-border healthcare<sup>1</sup> came into effect in England and Wales on 25 October 2013<sup>2</sup>. 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.

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

<sup>2</sup> 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)<sup>3</sup> 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 specialised<sup>4</sup>
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.

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

<sup>4</sup> 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**

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

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

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

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

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