Directorate of the Chief Nursing Officer
Patient Support & Public Involvement Team

The Scottish Government

DELIVERING
A GAMES LEGACY FOR SCOTLAND

CEL 22 (2013)

24 October 2013

Dear Colleague

CROSS BORDER HEALTHCARE & PATIENT MOBILITY IN EUROPE: DIRECTIVE 2011/24 EU ON THE APPLICATION OF PATIENTS' RIGHTS IN CROSS-BORDER HEALTHCARE (THE EUROPEAN CROSS-BORDER HEALTHCARE DIRECTIVE).

Purpose

1. This letter introduces guidance for NHS Scotland in handling requests from patients who are resident in Scotland or in another part of the European Economic Area (EEA) and who wish to exercise their rights to receive healthcare under the provisions of the European Cross-border Healthcare Directive. **It replaces the guidance issued in 2010 under cover of CEL 30 (2010).**

The Directive

2. The Directive, which entered the European statute book in April 2011, clarifies citizens' rights to access healthcare in another Member State of the European Economic Area (EEA) and sets out the grounds on which they can claim reimbursement of the eligible costs of treatment from their home healthcare system. The Directive's main objectives are to:

- Clarify and simplify the rules and procedures applicable to patients' access to cross-border healthcare;
- Provide EU citizens with better information on their rights;
- Ensure that cross-border healthcare is safe and of high-quality;
- Promote co-operation between Member States.

3. The Directive sets out the information that Member States must provide for citizens from other states considering coming to their country or region to purchase healthcare. It also sets out the arrangements that a Member State must provide to allow its own citizens to establish the extent of their right to reimbursement of the costs of cross-border healthcare if they choose to seek healthcare in another Member State.

4. However, the 'home' State retains responsibility for deciding what healthcare it will fund based on home provision - the Directive is not a way for citizens to gain entitlement to treatments that would not normally be available under their home healthcare service.

Addresses

For action or information a necessary

NHS Board Chief Executives
Medical / Clinical Directors
Nursing Directors
Finance Directors
Overseas Visitors Managers
Primary Care Administrators
Medical Practitioners
General Dental Practitioners

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5. Member States must be clear and transparent in home legislation and administrative processes as to what entitlements to healthcare home patients have within the home national health system. This is set out in **the** Regulations that implement the terms of the Directive in Scotland: **The National Health Service (Cross-border Health Care) (Scotland) Regulations 2013** which come into force on 25 October 2013 to meet the transposition (translation into domestic legislation) deadline as set out in the Directive, also 25 October.

The Guidance

6. This is not new. European citizens have been able to travel throughout the European Economic Area to receive healthcare for many years and you will recall that in August 2010, following publication of the draft Directive in 2008, we introduced interim Regulations and guidance under cover of CEL 30 (2010). However, it is evident that NHS Boards still need to develop procedures to handle requests from both outgoing and incoming patients who wish to exercise their legal rights under the Directive.

7. The guidance sets out the requirements in considering such approaches, rather than a step by step guide of how they can be delivered. It is for NHS Boards to develop robust internal procedures to meet the terms of the Directive and the Scottish Regulations that translate them into domestic legislation, if patient requests are to be handled smoothly and ultimately, we are to avoid potentially expensive and resource-intensive challenges in the courts.

National Contact Point

8. A key theme of the Directive is the emphasis placed on national and local health bodies in making information on patients' rights and entitlements publicly available and easily accessible. The Directive requires the establishment of "National Contact Points" (NCPs). These are national bodies from which information about patients' rights, healthcare providers and services available in Scotland and in other Member States may be facilitated. The intention is to establish a network of NCPs throughout the EU to facilitate exchange of information and help smooth the path for patients looking to access treatment in a particular Member State. There will be an NCP in each of the four counties that make up the UK, linked to each other and to other Member States. **Scotland's NCP is contained within NHS inform - the information arm of NHS 24.**

9. **The European Commission places great importance on this health information network, which it sees as a significant step in sharing health information across Member States. NHS Boards are, therefore, asked to ensure that details of the National Contact Point for Scotland are displayed prominently on their respective websites. The information held by our NCP will help to prevent the need for NHS Boards to act as the first point of call for those considering travel in the EEA for healthcare.**

Monitoring

10. **I would also remind you of the need for NHS Boards to record information on patients who use the Directive to receive healthcare. This should include: the type of treatment; cost of treatment; country of treatment (outgoing patients); and country of origin (incoming patients). The Cabinet Secretary confirmed that this was already happening when he appeared before the Health and Sport Committee on 1 October to introduce the National Health Service (Cross-border Health Care) (Scotland) Regulations 2013 and it is vital that accurate records are maintained.**

11. There are provisions in the Directive to limit access to treatment, but only if it places undue pressures on services in the Member State and is evidence-based. To-date few patients come to Scotland or choose to travel to other parts of Europe from Scotland for European cross-border treatment. This is unlikely to change to any great extent, although given recent economic developments in Europe and the possibility of major constitutional change, it is important we keep numbers under review. **We must ensure that cross-border healthcare does not have an adverse impact on the way that we plan, fund and deliver healthcare in Scotland, whilst at the same time allow patients to exercise their rights in this regard, if they so wish.**

Next Steps

12. **I appreciate that a number of NHS Boards may still have concerns about the Directive and the impact that it may have on local NHS services, so I have asked John Brunton, our European Healthcare Policy Manager to hold a meeting with representatives from all the territorial Boards (including primary care) and Special Boards before the end of this year to discuss the Directive and its implications; experiences of Cross-border healthcare; and to share learning and good practice.**

Distribution

13. I would be grateful if you could use your good offices to ensure that this CEL is circulated as widely as possible, including to all frontline staff that may have an interest in Cross-border Healthcare as part of their responsibilities. **It is particularly important that the CEL is brought to the attention of general practitioners, given that they are usually the point of entry for access to secondary care and need to know that patients, in certain circumstances, have legal rights under European and Scottish legislation to travel for Cross-border healthcare in Europe if they so choose.**

Enquiries

14. Enquiries should be directed to John Brunton, European Healthcare Policy Manager in The Scottish Government Health and Social Care Directorates.

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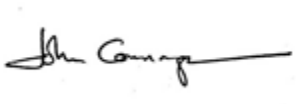

JOHN CONNAGHAN

Acting Director-General Health & Social Care and
Acting Chief Executive NHS Scotland

CROSS BORDER HEALTHCARE & PATIENT MOBILITY IN EUROPE

Implementation of Directive 2011/24/EU on Patients' Rights in Cross-border Healthcare - The European Cross-Border Healthcare Directive

Guidance on Handling Patients' Requests to Receive Treatment in Countries of the European Economic Area under the provisions of the Directive

OCTOBER 2013

CONTENTS

Purpose of the Guidance

1.1 The purpose of this guidance is to explain the rights and entitlements of patients to help NHS Scotland understand the obligations set out by the EU Directive on Cross-border healthcare; to appreciate how the broader aspects of patient mobility in Europe impact on patients and our health system as a whole; and to provide a framework for the management of patients who wish to exercise their rights under the Directive. This stems from the freedom to provide goods and services under the Treaty on the Functioning of the EU.

1.2 The guidance accompanies the **National Health Service (Cross Border Health Care) (Scotland) Regulations 2013** and sets out the obligations placed on NHS Boards in Scotland with regard to claims for reimbursement of treatment costs and applications from patients who seek prior authorisation for the receipt of healthcare in another EEA[1] State. There is also information for NHS Boards who may receive requests from patients from other European Economic Area (EEA) States for treatment in Scotland under the provisions of the Directive.

1.3 This guidance should be read in conjunction with the Regulations. In understanding the totality of the Directive's obligations, the **public consultation document** explains the Scottish Government's overall approach in implementing the Directive.

Scope

1.4 This guidance relates to the management of applications for treatment within the European Economic Area (EEA). Internal Cross-border arrangements between Scotland, England, Wales and Northern Ireland are outside the scope of the Directive, as are reciprocal health agreements with non-EEA countries. **This guidance replaces that provided under cover of CEL 30 (2010).**

[1] The Member States of the European Union plus Iceland, Liechtenstein and Norway. However, the Directive will not apply to Iceland Liechtenstein and Norway until those states enter into an EEA Agreement.

Introduction

General

2.1 The majority of EU citizens receive healthcare in the Member State where they live, provided by their home state healthcare system - in Scotland the NHS. However, in certain circumstances it may benefit the patient to obtain healthcare in another European country, for example where there may be greater expertise available; lower costs; better availability of certain specialised treatments; or where waiting times might be shorter.

2.2 EU Regulation on the co-ordination of social security systems already provides certain levels of healthcare cover to EEA citizens. These arrangements apply to tourists requiring necessary care when visiting another Member State via the European Health Insurance Card and in certain limited circumstances, to those patients who wish to travel specifically to receive healthcare under the S2 scheme. The Regulation also covers state pensioners' healthcare as state social security provisions, including those for healthcare, are transferable around the EU at state pension age under the S1 scheme.

How the Directive Evolved

2.3 While these reciprocal arrangements have existed for many years, current generations of Europeans, accustomed to crossing borders with ease and being able to purchase goods and services from any part of the EU, are proving less willing to accept constraints on how and where they obtain their healthcare. This is often due to perceived advantages relating to: quality; favourable cost, waiting times, the availability of different treatments or where citizens have close cultural or family links in another country.

2.4 Over the past 15 years there have been more than a dozen high profile legal cases in which Member States' interpretation of the rules in respect of obtaining healthcare across borders in Europe has been questioned and on which the Court of Justice of the European Union has been asked to make a ruling. The development of this case-law based on individual cases (including a ruling against the UK in 2006: Watts -v- Bedford Primary Care Trust in 2006), was inevitably piecemeal and could not provide a coherent overall approach to the rules surrounding patient mobility in Europe.

2.5 With so many ad hoc judgements being made in the courts, based on health systems which are very different in organisation and funding, the development of an EU-wide Directive was seen as necessary to clarify the law and the rights of citizens across the EU.

2.6 This new legislation reflects existing rights under the Treaty on the Functioning of the EU and the principles confirmed by established European case-law. It applies best practice in providing access to these rights. Its main objectives are to:

- Clarify and simplify the rules and procedures applicable to patients' access to Cross-border healthcare;
- Provide EU citizens with better information on their rights;
- Ensure that Cross-border healthcare is safe and of high-quality;
- Promote co-operation between Member States.

2.7 The Directive sets out the information Member States must provide for patients from other states considering coming to their country to purchase healthcare. It also sets out the arrangements that Member States must provide to allow their own citizens to exercise their rights to reimbursement of the costs of Cross-border healthcare if they choose to seek such healthcare in another part of the EEA.

2.8 **Importantly, the 'home' state retains responsibility for deciding what healthcare it will fund on a Cross-border basis - so the Directive is not a way for people to gain entitlement to treatments that would not normally be available under their home health service.** However, Member States are required to be clear and transparent in home legislation and administrative processes as to what entitlements to healthcare home patients have within the state health system in their country of residence. This is essential as it allows patients' to determine whether they can travel for treatment and be reimbursed on their return.

2.9 **All Member States of the EU must implement the Directive by 25 October 2013. In Scotland the main provisions are implemented by the National Health Service (Cross-border Health Care) (Scotland) Regulations 2013, which come into force on the implementation date.**

Existing Regulations and the Directive

General

3.1 There are currently two potential routes for patients to receive planned care in another Member State at the expense of the NHS:

a) the long-established **S2 route** under Articles 20 and 27(3) of Regulation (EC) 883/2004, which stems from the EU-wide co-ordination of social security systems; and

b) Directive 2011/24/EU - the **Directive Route** (which will not apply to Iceland, Liechtenstein, or Norway until an EEA agreement is reached). Therefore in this guidance the "Directive Route" describes the provisions of the Directive as implemented by the National Health Service (Cross-border Healthcare) (Scotland) Regulation 2013.

The S2 Route

3.2. The key difference between the two routes is that the S2 route relates only to state-provided treatment and costs are dealt with directly between Member States, with the S2 acting as a form of payment guarantee. This means that in the majority of cases, the patient is not required to pay anything themselves under S2 arrangements.

3.3 Under S2 provisions, Member States retain discretion as to whether to authorise planned treatment in another Member State. **The exception to this is where "undue delay" is relevant** - i.e. where treatment cannot be provided by the NHS within a time that is medically acceptable, based upon an objective clinical assessment of the patient and their individual circumstances (not based on National waiting time guarantees). Where this is the case, authorisation must be granted. **The principles surrounding undue delay are discussed further on in this guidance - Page 14.**

The Directive

3.4 Unlike the S2 route, under the terms of the Directive EU citizens can choose to obtain a healthcare service in another Member State, including private healthcare, that is the same as or equivalent to a service that would have been provided to the patient within the NHS in the circumstances of their case. **The patient then has a right to claim reimbursement of the cost of the treatment, up to the amount it would have cost had it been provided by the NHS, or the actual amount where this is lower**.

3.5 Under the Directive a patient may receive treatment in the state-provided sector or they may access services in the private sector. **The S2 route does not cover private sector treatment.**

3.6 Under the Directive, the principle of reimbursement of costs assumes that patients will pay the overseas provider up front for their treatment and then claim reimbursement. The patient will also bear the financial risk of any additional costs arising. Except where legislation requires the patient to seek prior authorisation, they may obtain healthcare in another Member State under the Directive without authorisation from NHS Scotland. **Under the S2 route, all healthcare must be authorised in advance.**

S2 AND AND DIRECTIVE COMPARISON TABLE

COVERAGE	**S2 ROUTE**	**DIRECTIVE ROUTE**
EU / EEA	Yes	Yes*
Switzerland	Yes	No
Requires prior authorisation	Yes	Specified treatments only (**see 6.6**)
Discretionary (unless undue delay applies)	Yes	**See Pages 13 and 14**
Planned healthcare	Yes	Yes
Unplanned (immediately necessary) healthcare	No	Yes (but the EHIC should always be the first option)
Treatment in state-run facilities	Yes	Yes
Treatment in private / non-contracted facilities	No	Yes
Must be granted if undue delay applies	Yes	Yes
Requires payment in full up front	No	Yes
Scope restricted to home entitlements only	No	Yes
Retrospective reimbursement (depending on circumstances)	No	Yes

Information on processing S2 scheme applications is set out at Annex A.

***The Directive does not apply to non EU Member States - Liechtenstein, Iceland and Norway - until an EEA agreement is reached.**

Patients seeking treatment in another EEA State

General Principles

4.1 NHS Boards have responsibility for the various patient mobility and Cross-border healthcare functions. These include:

- Patient applications for authorisation under Regulation 883/2004 - the S2 route;
- Reimbursement under the Directive;
- Publicising information on rights, entitlements and reimbursement principles, including which services patients will be reimbursed for;
- Considering applications for prior authorisation;
- Calculating reimbursement levels and informing patients about this;
- Dealing with appeals & reviews; and
- Data collection.

4.2 It is, therefore, recommended that patients wishing to access planned treatment in another EEA Member State should be advised to contact their local NHS Board in advance of travelling to discuss whether prior authorisation is required, as well as the levels of reimbursement that will apply. Otherwise, they may discover after treatment has been delivered that they have obtained a service that they are not entitled to under the NHS and will not, therefore, receive any reimbursement for their outlay.

4.3 It is an expectation that patients wishing to receive planed treatment in another part of the EEA will have seen a GP in Scotland and obtained a referral to secondary healthcare, **although this is cannot be applied as a condition of reimbursement.**

Implications for Patients

4.4 As well as reimbursement considerations, there is a wide range of other issues that patients will need to be aware of when seeking treatment in another European country. For example, there may not be the same standards of healthcare or aftercare, or it may not be delivered in the same way as at home. There may also be language barriers to negotiate.

4.5 In seeking healthcare in another EEA State, the patient is stepping outside of NHS jurisdiction and consequently, it is the law of the country of treatment that will apply. Therefore, it is the patient's responsibility to be clear on who in the Member State of treatment is accountable for assuring their safety and that standards are maintained throughout the course of their treatment.

4.6 **NHS clinicians and healthcare providers (NHS Boards) are not liable for any failures in treatments undertaken in another European country under the Directive. Their role is limited to aiding the facilitation process if it is the patient's expressed wish that they want to exercise their rights under the Directive.**

4.7 The process of prior authorisation, where it applies, provides individual patients with a means of obtaining clarity about a range of matters relating to patient care. These include:

- Confirmation that the treatment is one the NHS offers (i.e. the patient would be entitled to reimbursement and the level of such reimbursement).

- Which elements of the care pathway are being funded?

- Any concerns around the suitability or likely outcome of the treatment.

- What the patient must do if there is a problem with the treatment they receive, and so on.

4.8 It also provides an opportunity to ensure that patients are aware of all of the possible treatment options within the NHS, although patients cannot be prevented from seeking treatment in Europe simply because appropriate treatment is available at home.

4.9 Patients also need to be clear that prior authorisation in no way implies NHS clinical approval of a patient's planned healthcare in another Member State, nor does it imply acceptance of any responsibility for that treatment. **And, importantly, no duty of care attaches to the authorisation.**

4.10 These general principles highlight the need for NHS Boards and clinicians to advise anyone who intends to obtain medical treatment in another country under the Directive to ensure that they have comprehensive independent medical insurance for their trip. **And that the cost of such insurance is not reimbursable by NHS Scotland in any circumstances.**

Patients' Rights & information: National Contact Points

5.1 A key theme of the Directive is the emphasis placed on national and local health bodies in making information on rights and entitlements publicly available and easily accessible. And the conditions that will apply to reimbursement and procedures for appeal and redress if patients consider that their rights have not been respected.

5.2 The Directive requires the establishment of "National Contact Points" (NCPs). These are national bodies from which information about patients' rights and providers or services available in other Member States may be facilitated.

5.3 The intention is to establish a network of NCPs throughout the EU to facilitate exchange of information and help smooth the path for patients looking to access treatment in a particular Member State.

5.4 The information given to patients / citizens by NCPs on quality of healthcare, patient safety and procedures to follow will help them make an informed choice on the healthcare they seek.

5.5 There will be National Contact Point in each of the four counties that make up the UK, linked to each other and to other Member States.

5.6 **The NCP for Scotland is contained within the information arm of NHS 24 - NHS inform.**

5.7 **The European Commission places great importance on this health information network, which it sees as a significant step in sharing health information across Member States. NHS Boards are, therefore, asked to ensure that contact details of the National Contact Point for Scotland are displayed prominently on their respective websites. The information held by the NCP will help to prevent the need for NHS Boards to act as the first point of call for those with an interest travelling in the EEA for healthcare.**

The Application Process

6.1 NHS Boards are responsible for directly reimbursing the patient costs of Cross-border healthcare as set out in the implementing regulations - The National Health Service (Cross-border Health Care) Scotland Regulations 2013.

General

6.2 The process for making and determining applications under the Directive, in broad terms, is that the patient applies to the relevant NHS Board for reimbursement or prior authorisation, as applicable and the Board's Cross-border policy team assess the application based on:

- **The patient's eligibility for NHS treatment;**

- Whether the treatment sought is the same as or equivalent to treatment provided by NHS Scotland;

- Whether there is undue delay; and

- Whether there is evidence of clinical need.

Deciding applications

6.3 In assessing and deciding applications, NHS Boards need to set out clearly to patients**:**

- **The services for which prior authorisation is a requirement (see 6.6);**

- Where to and how patients should apply for prior authorisation;

- What factors will be taken into account in arriving at the decision;

- The reasons for granting or refusing authorisation;

- A clear statement of the applicable reimbursement, or reasons for refusing reimbursement.

- What patients can do if they are unhappy with the outcome - i.e. what the appeals/review process is; and

- The timescales that will apply in determining the application (within 20 days unless further information is required).

Other General Principles

6.4 In determining applications, NHS Boards must have regard to the following principles:

- Procedures regarding Cross-border healthcare and reimbursement of costs are based on objective, non-discriminatory criteria which are necessary and proportionate;
- Applications are dealt with objectively and impartially;
- The decision maker must consider all the relevant facts of the application;
- Administrative procedures must be easily accessible and all relevant information made publicly available;
- Decisions are properly reasoned and subject, on a case-by-case basis, to review and are capable of being challenged.

Prior authorisation

6.5 NHS Boards need to consider each application carefully. As a general principle, they may refuse reimbursement in respect of a patient who should have applied for prior authorisation but did not do so. However, retrospective applications may be considered under the Directive in circumstances where it was not reasonable to expect the patient to have applied for prior authorisation before receiving the treatment or service in another EEA State (treatment was required urgently). This will be on a case-by-case basis, taking account of the facts of the case.

6.6 **The services which require prior authorisation under the Directive are the Prescribed Services (funded through National Services Division).**

Refusal of Prior Authorisation

6.7 Where prior authorisation has been requested, the Directive gives Member States the discretion to refuse, **but only in the following four circumstances**:

a) Where the patient will, according to a clinical evaluation, be exposed with reasonable certainty to a patient-safety risk that cannot be regarded as acceptable, taking into account the potential benefit for the patient seeking Cross-border healthcare; (e.g. from poor quality care or unproven procedures).

b) Where the general public will be exposed with reasonable certainty to a substantial safety hazard as a result of the Cross-border healthcare in question; (this might include where a patient who had a highly contagious disease wanted to go to another state for treatment or where a patient with mental health problems and a history of violence requested authorisation).

c) Where this healthcare is to be provided by a healthcare provider that raises serious and specific concerns relating to the respect of standards and guidelines on quality of care and patient safety, including provisions on supervision, whether these standards and guidelines are laid down by laws and regulations or through accreditation systems established by the Member State of treatment; (this would require evidence from the appropriate regulator or authority).

d) Where this healthcare can be provided on its territory within a time-limit which is medically justifiable, taking into account the current state of health and the probable course of the illness of each person concerned (i.e. where there is no “undue delay” in providing treatment on the NHS).

Undue Delay

6.8 "Undue delay" cannot be determined simply on the basis of general waiting time arrangements (whether national or local) for the purpose of managing pre-determined clinical priorities. Whether the waiting time is medically justifiable must be based on an objective medical assessment of the individual patient's medical condition, including the patient's medical history, the extent of the patient's pain, disability, disability or discomfort or other suffering attributable to the medical condition; whether that pain, disability, or discomfort makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks; and the extent to which the service would be likely to alleviate or enable alleviation of the pain disability or suffering .

6.9 Therefore, in a case where NHS Scotland wished to refuse authorisation under criterion (d) above, it would need to be able to set out in full the reasons for refusing the application, including the reasons why the decision maker concluded that the NHS **could** provide the treatment within a medically justifiable period of time based on an individual assessment of the patient's case. The matters which NHS Boards must take into account in determining whether the length of any undue delay is medically justifiable are set out in the Directive implementing Regulations and include:

(a) The patient's medical history;

(b) The extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the service is to relate;

(c) Whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks; and

(d) The extent to which the provision of the service would be likely to alleviate, or enable the alleviation of, the pain, disability, discomfort or suffering.

6.10 **In cases where the patient requests prior authorisation for a relevant treatment, NHS Boards must first of all determine whether or not the patient meets the requirements of the S2 route (See 3.2 above)**. **If they do, they will be granted authorisation via that process, unless the patient specifically requests to use the Directive - for example, to access treatment in the private sector in an EEA state. This will to ensure that appropriate consideration is given to patients' rights under both sets of legislation and that the relevant case law is applied effectively.**

Reimbursement

6.11 A patient seeking treatment in another EEA state under the Directive needs to pay the overseas healthcare provider direct for their treatment. As long as it is a treatment, product or intervention that the patient would be entitled to receive on the NHS in the circumstances of their case, they may subsequently request reimbursement from their local NHS Board for some or all of the costs of this treatment.

6.12 In requesting reimbursement for the cost of their treatment, patients will need to provide NHS Scotland with evidence of clinical need, itemised receipts and proof of payment for the treatment or service they have purchased. If the patient's receipts and supporting documentation are in a different language, then these will need to be translated. National Contact Points will eventually play a key role in helping to facilitate this with their counterparts in other European countries. Reasonable translation costs incurred by NHS Boards can be deducted from the level of reimbursement.

6.13 The maximum level of reimbursement may be limited to the cost of the equivalent NHS service or the actual cost of treatment, where this is lower than the NHS cost. However, if the treatment for which reimbursement is being requested would normally attract a patient charge under the NHS (for instance NHS dental treatment) this may be deducted from the amount due and any additional cost is borne by the patient.

6.14 Member States must have a transparent mechanism for the calculation of costs for Cross-border healthcare reimbursement, based on objective, non-discriminatory criteria known in advance. To calculate reimbursement, NHS Boards can use published average reference costs or the **Scottish National Tariff**.

Determining entitlements

6.15 The Directive does not allow NHS patients to go anywhere within the EEA and get any treatment or drug they want and then seek reimbursement from the NHS **- If you are not entitled to it here, you cannot get it there.** Patients will only be eligible to receive reimbursement for treatments, products and services that would be made available by NHS Scotland and based on their clinical need.

6.16 To enable people to exercise their rights under the Directive, information on those services, interventions and treatment regimes that are generally available to NHS patients must provide easily accessible published information providing appropriate clarity and transparency on entitlements for patients when making decisions about Cross-border healthcare.

As a starting point only, the treatments listed in the Scottish National Tariff may be considered to be patients' entitlements, although individual Boards will also need to consider whether there are other services they provide at local or regional level that are not part of the Scottish National Tariff but should be published.

6.17 Patients need this information to understand whether they can access the treatment they require and then expect reimbursement of their costs. Much of this information is already produced in the NHS in terms of treatment policies, criteria and thresholds for treatment. However, this is not always easily accessible to patients and needs to be made available in easily understood formats.

6.18 Not providing patients with this information in a straightforward and accessible way is considered a barrier to freedom of movement and is therefore contrary to European law. To avoid uncertainty for patients, to meet transparency requirements and reduce the risk of any subsequent legal or civil challenge, NHS Boards will need to be clear to patients at the outset as to what types of healthcare they provide, or alternatively, what they do not provide.

6.19 To help achieve this, **The NHS (Cross Border Health Care)(Scotland Regulations 2013 place a legal requirement on NHS Boards to provide patients with the information they need by whatever means Boards think appropriate.** However, the information must be easily accessible; available by electronic means; and in a way that is compatible with the functions of the National Contact Point. The information must also include:

- **Any criteria that apply to a particular service;**

- **Any treatment or service that is not generally available or only available where certain criteria apply or conditions are met; and**

- **Where applicable, the relevant NHS Board's procedure for considering the application of such criteria or conditions to a particular case.**

6.20 As far as it can be achieved, NHS Boards must ensure that treatment or services are identified using terms that do not require specialist knowledge that would act as a barrier in allowing patients to exercise their rights under the Directive or in identifying their health entitlements.

Telemedicine

6.21 Cross-border telemedicine services are covered by the Directive, which contains two express references to telemedicine:

- **Article 3(d)** - 'Member State of treatment' means the Member State on whose territory healthcare is actually provided to the patient. **In the case of telemedicine, healthcare is considered to be provided in the Member State where the healthcare provider is established;**
- and **Article 7(7)** - The Member State of affiliation may impose on an insured person seeking reimbursement of the costs of Cross-border healthcare, **including healthcare received through means of telemedicine**, the same conditions, criteria of eligibility and regulatory and administrative formalities, whether set at a local, regional or national level, as it would impose if this healthcare were provided in its territory.

6.22 This is supported by **Article 1(2)** - This Directive shall apply to the provision of healthcare to patients, regardless of how it is organised, delivered and financed.

6.23 Therefore, when considering requests for reimbursement for healthcare that has been delivered in another Member State via telemedicine, NHS Boards must consider whether **the actual healthcare or services** that the patient received via telemedicine from a healthcare provider established in another Member State, was the same as or equivalent to, treatment that they would have be entitled to on the NHS at home.

Payment of travelling expenses

6.24 The effect of case law is that the costs associated with travel should only be considered where a patient would have been legally entitled to assistance with such costs if the treatment had been provided in Scotland. **This would be via the schemes governed by the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No.2) Regulations 2003, as amended.**

6.25 These Regulations provide for reimbursement of travel costs by the cheapest "reasonable" means of transport only - not accommodation, nor subsistence. Under the arrangements, patients incur the costs and then claim reimbursement. The "reasonableness" test is whether the patient reaches the place of treatment in a reasonable time and without detriment to their condition.

6.26 NHS Boards should only consider requests for assistance with travel costs from patients who are legally entitled to such support at home and should seek proof of entitlements as part of that consideration. Reimbursement of such costs should be for the most efficient mode of transport to the destination of treatment. It should be noted that in certain circumstances, the travel costs of a patient's companion may also be met if that would have been the case at home.

Advice and Assistance

6.27 To enable home (resident in Scotland) patients to make informed decisions in exercising their rights under the Directive, NHS Boards should put arrangements in place to provide advice and assistance on request from patients who are contemplating travelling to another EEA state for treatment or services. **Where a patient makes a specific request for advice (not approval) NHS Boards should, as far as reasonable, respond within 7 working days of receiving the request.**

Patients from European Economic Area (EEA) States Seeking Treatment in Scotland

Non-discrimination

7.1 The inflow of patients from other EEA States who wish to access treatment in Scotland raises particular issues for NHS Boards. Although there is no specific requirement on the provider to accept any patient, there are a number of factors that need to be considered.

7.2 The Directive does not require providers to accept patients for planned healthcare if this would be to the detriment of their own patients with similar health needs. However, given that it is possible that NHS Boards may be contacted in advance by the prospective patient, his or her clinician or potentially another country's National Contact Point, NHS Boards need to demonstrate that they are not simply discriminating against EEA nationals on grounds of nationality if rejecting a request for treatment.

7.3 In principle, the strongest ground for refusing an EEA patient is lack of service capacity. However, in reality the patient would simply be offered the option to be treated alongside "home" patients on the basis of clinical priority. Alternatively, they have the option of considering a different provider.

Obligations on providers

7.4 NHS Boards who are providing treatment to EEA patients under the provisions of the Directive need to observe some key requirements in the same way as when treating Scottish resident patients. They must:

- Provide patients with relevant information on treatment options and quality and safety;
- Provide clear invoices and price information;
- Apply fees in non-discriminatory manner;
- Ensure transparent complaints procedures and procedures to obtain redress;
- Apply adequate systems of professional liability insurance or similar;
- Respect privacy in the processing of personal information;
- Supply patients with a copy of the record of their medical treatment.

Charging

7.5 The Directive requires healthcare providers to give patients clear information on prices, this includes invoices.

NHS Boards cannot seek to charge more simply because the person is an EEA patient. Boards must, therefore, apply the same scale of healthcare costs to EEA patients as for domestic patients. If there is no comparable price for domestic patients, the price must be based on objective, non-discriminatory criteria. NHS Boards may, however, make additional charges for services that are not a standard part of the normal treatment arrangements for NHS patients.

7.6 If an NHS Board accepts an EEA patient for treatment, they should not assume automatically that the patient wishes to be considered as a private patient. While the patient is independent of the NHS system and is not referred formally by their state health system, they may be exercising their fundamental rights as an EEA citizen and may themselves receive reimbursement from their state system for eligible costs under the provisions of the Directive (i.e. turning around the reimbursement process outlined above).

7.7 Similarly, primary care providers should not assume that an EEA patient can, or should be treated as a private patient. Although, at the same time, patients who specify from the outset that they do wish to be treated privately may be charged at the equivalent cost to private patients in Scotland.

7.8 In terms of how these requirements are met, for secondary care provided by the NHS, the relevant Board should recover the full cost of the treatment given to an EEA patient under the Directive, which may include an element to cover reasonable costs of administration. However they must have a transparent mechanism for the calculation of costs for Cross-border healthcare and this must be based on objective, non-discriminatory criteria known in advance. To calculate the NHS cost, NHS Boards should use published average reference costs or the **Scottish National Tariff**

Primary Care

7.9 For GP and GP out of hours services, if an EEA resident is treated as an NHS patient under the Directive (as they should be unless they specifically request to be treated on a private basis), then that treatment / consultation is currently free of charge, regardless of nationality. Charges are, however applied for medication dispensed by GPs or by community pharmacies - the actual cost to the NHS and a reasonable administration charge.

NB - short-term visitors from the EEA who become ill or have an accident and present the European Health Insurance Card remain entitled to necessary treatment and prescribed medication in either the primary or secondary care sector at no cost under European social security co-operation legislation - Regulation (EC) 883/2004. Costs are recovered at Member State level.

Dental Care

7.10 NHS dental services should be calculated using the actual cost to the NHS without the 20% subsidy and ceiling that is applied when NHS dental treatment is provided to resident NHS patients in Scotland.

Procedures and Monitoring

7.11 NHS Scotland needs to ensure that the systems that should already be in place for dealing with requests for treatment from EEA patients include: processes for seeking more information about the patients' condition and diagnoses where this is not initially available; mechanisms for dealing with payment direct from the patient; and clear information about the services they provide and the terms of treatment.

7.12 It is possible that the inflow of patients from other EEA States may, over time create a demand exceeding the capacities existing in NHS Scotland for certain treatments - or there may be a need to control costs relating to the planning or funding of services. The Directive allows Member States to retain the possibility, in exceptional cases, to adopt measures controlling access to treatment where this is necessary and proportionate to ensure sufficient and permanent access to healthcare for domestic citizens.

7.13 However, this could not be an arbitrary decision or a policy of first resort and future consideration would need to be supported by clear evidence on the effects of Cross-border healthcare on the home system. NHS Boards should provide the Scottish Government Health & Social Care Directorates with any such evidence.

Additional Information / Enquiries

8.1 For enquiries arising from this guidance, please contact the European Healthcare Policy Manager:

JOHN BRUNTON
European Healthcare Policy Manager
Scottish Government Health & Social Care Directorates

Ground East Rear
St Andrew House
Regent Road
EDINBURGH
EH1 3DG

Tel: 0131 244 2544

Email: john.brunton@scotland.gsi.gov.uk

ANNEX A

THE S2 SCHEME (FORMERLY THE E112)

General

1. The S2 scheme (under EU Regulation on the co-ordination of social security systems) allows Scottish patients, in certain circumstances, to travel for state-funded treatment in another European Economic Area (EEA) country or Switzerland.

2. However, **except in cases where there is undue delay** (based on an assessment of the patient's condition and circumstances) **permission to use the S2 scheme is at the discretion of the healthcare provider - in Scotland the relevant NHS Board. Prior authorisation is always required and retrospective applications should not be considered.**

3. Treatment is provided under the same conditions of care and payment as for residents of that country and in a number of EEA countries, as in the UK, care is completely free. This means the S2 will cover 100% of the costs of care.

Co-payments

4. However, in some countries the patient has to pay a percentage of the costs personally. For example, in some countries, patients cover 25% of the costs of their state-provided treatment, known as a "co-payment charge". The state covers the other 75%.

5. If a Scottish patient received treatment under a healthcare system that applies a co-payment they would be expected to pay the same co-payment charge as a patient from that country - the home State pays the balance. Patients may be able to claim back some or all of the co-payment when you return to the UK through the Department for Work & Pensions.

Permission to Use the S2 Route

6. To apply for S2 funding and an S2 form the patient approaches their local NHS Board, which decides whether or not to approve the application, based on the following criteria:

- The patient's place of permanent residence is Scotland and they are entitled to treatment under the NHS.

- An NHS consultant / lead clinician has recommended in writing that the patient be treated in another EEA country, and a full assessment has been carried out to demonstrate that the treatment will meet the patient's specific needs.

- The cost of sending the patient abroad for treatment is justified against the Board's responsibilities for spending public money efficiently and fairly

- The treatment is available under the receiving country's state healthcare system and it has agreed to accept the patient.

7. Requests for S2 forms are usually processed by e-mail as Overseas Healthcare Team do not need to see medical or internal NHS Board authorisations etc.

Requesting that the Department for Work & Pensions raise An S2 Form

8. The information required is as follows:

- Patient's name, full home address and date of birth
- National Insurance Number: and/or NHS number
- Hospital details where treatment is being undertaken - name and full address.
- Short description of treatment
- Dates of treatment
- A statement or sentence in the e-mail confirming that the NHS Board has approved treatment.

9. The completed S2 will then be issued to the patient's home address for them to present to the relevant hospital prior to their treatment.

10. Where an urgent request for an S2 is made OHT can fax direct to the receiving hospital if a contact name and fax number are given in the e-mail content.

11. Where a treatment extends beyond the original dates given a further S2 request is required with the commencement date the day after the initial S2 end date.

Maternity care in another EEA State

12. The exception to this process is maternity care under the S2 route, where different arrangements apply. To apply for an S2 covering maternity care (only), the applicant should write to the Overseas Healthcare Team in Newcastle at the address below, explaining why they want care outside the UK and enclosing the following information:

- A maternity certificate (MATB1) or a letter from a UK GP or midwife showing the expected date of delivery;
- NHS number or National Insurance number;
- Date of birth, full UK address and dates of travel;
- Whether returning to the UK after giving birth and whether the applicant has already left the UK for the other country.

Contact details

13. The contact telephone number is 0191 2181999, option 3, and then option 1. This system will connect with all available team members in turn to maximise customer contact.

E-mail address for S2 form requests is:

OHT.overseasvisitorsteam@dwp.gsi.gov.uk

The postal address is:

Department for Work & Pensions
NHS Liaison Team
Floor 6
Durham House
Washington
Tyne & Wear
NE38 7SF