Editorial

Eu Cross-border Healthcare and Health Law

Introduction

The first report on the operation of Directive 2011/24/EU on the application of patients’ rights in cross-border healthcare (hereafter referred to as the Directive) will be drawn up by the European Commission by 25 October 2015 (Article 20 of the Directive). The main emphasis of the reporting lays on patient flows, financial dimensions of patient mobility, including the system of prior authorisation for the reimbursement of costs of cross-border healthcare, national contact points and the implementation of the European reference networks. The forthcoming report was preceded by a Commission report of February 2014 on the possible effects resulting from the joint application of the Directive and the Social Security Regulations. At that time it was considered too early to draw conclusions on questions such as whether there were, or were not, any disproportional effects resulting from the implementation of the Directive, on the use Member States have made of the possibility to introduce prior authorisation systems under the Directive, and on the possible substitution effects with the Social Security Regulations. However, the report provides useful advice for the October 2015 impact measurement reporting. The concept of a medically justifiable time limit under the prior authorisation system

1 See European Journal of Health Law, Special Issue, 21 (1) (2014) on the EU Cross-Border Healthcare Directive for a first impression of implementation in national law by some EU Member States. The Directive does not affect the existing national laws on internet sales of medicinal products and devices. It does not apply to public vaccination programs against infectious diseases (exclusively national, subject to planning and implementation measures). Services in the field of long term care the purpose of which is to support people in need of assistance in carrying out routine, everyday tasks and allocation of/access to organs for the purpose of organ transplants are also excluded.

should be the same under both the system of the Directive and the Social Security Regulations. Data gathering under both systems should be improved for the sake of comparison, as well as — in the case of the Directive — in order to demonstrate whether the system of prior authorisation (planned healthcare) meets the overall requirements of necessity and proportionality.

To be able to properly determine the substitution effects of the Directive on the number of patients that make use of the Social Security Regulations, the 2014 European Commission report insists upon a ‘baseline’ zero-measurement against which future impacts could be measured. The report also provides for a set of requirements for data assembling after transposition of the Directive. This will give insight in the dynamic impact of the Directive in relation to the Regulations. An example of this is the question whether more patients will receive prior authorisation under the Regulations as a result of additional information on undue delay coming available to patients under the Directive, or as a result of increased awareness about patients’ rights.3

The forthcoming 2015 report on the operation of the Directive is an opportunity to place the Directive in a broader perspective.

**Financial Dimension, Prior Authorisation**

In relation to the financial dimension of patient mobility, the European Court of Justice, in a judgment of 9 October 2014, has reiterated the limits to the financial duties of the Member State of affiliation.

The reimbursement of medical expenses incurred in another Member States cannot be refused where a lack of basic medical supplies and infrastructure makes it impossible for the insured person to receive hospital treatment in good time in his Member State of residence. The question whether it is impossible to receive hospital treatment must be assessed by reference to all the hospital establishments that are capable of providing the treatment in the Member State in question and of the period within which the treatment could be received in good time.4

Differences in (the application of) professional medical guidelines and recommendations among Member States can influence prior authorisation policies. Recently, this was the reason for Dutch health insurance companies (who as private undertakings are performing a public task) to tighten their rules by

---

3 Para. 4 of the Report.

4 Judgment in Case C-268/13; EU Court of Justice, Press release no. 134/14, 9 October 2014.