Cross-Border Healthcare

- EU Legal Framework

EU citizens’ rights on health care - Info-day on Communication and Information
Italian Ministry of Health
Rome, 12 November 2014

Marzena Brauhoff
Legal Expert – Free movement of workers, Coordination of Social Security Systems
Directorate General for Employment, Social Affairs and Inclusion, European Commission
EU legislative instruments

- Coordination Regulations in place since 1958 (currently Regulations 883/2004 and 987/2009)
- Since 2011 Directive 2011/24 also deals with cross-border healthcare (transposition: 2013)
- Need for dealing with the co-existence of two instruments
Regulations: Sickness - basic rules

two major categories – benefits in CASH & in KIND

• **CASH benefits** – intended to replace income
  - paid by the State where the person is insured (amount and duration depends on the national legislation). Exportable.

• **benefits in KIND** – healthcare, medical treatment, medicines, hospitalisation & direct payments to reimburse the costs.
  - provided by the State where the person resides or stays. Reimbursable by the competent State.

• long term care
Benefits in kind – basic scenarios

Temporary stay outside the State of insurance:
I. Necessary care – EHIC
II. Scheduled treatment – requires prior authorisation (PA)

Residence outside the State of insurance
• Entitlement to all benefits in kind – equal access to healthcare with nationals of MS of residence
• Registration with the sickness insurance institution with form S1 from competent State
• Costs covered by competent State
I. Necessary care during temporary stay (EHIC)


+explanatory note N

- “...during temporary stay”
- right to “...benefits in kind which become necessary on medical grounds during their stay taking into account the nature of the benefits and the length of the stay”
- Benefits provided in accordance with the conditions and tariffs of legislation of the MS of stay
- Reimbursed between institutions/patients fee may apply
European Health Insurance Card (EHIC)

almost 200 million users throughout the European Union
EHIC

• Certifies entitlement of the person to receive the necessary health care in another Member State

• Is issued always by the **competent MS**

• Reimbursements between the institutions for the costs generated by the use of EHIC on the **basis of actual costs** (full cost/co-payment applicable)
  
  • **See: article 35 of Regulation 883/2004**
  
  • **Decision S4 para. 2-4**
EHIC layout

- Decisions S1 and S2 of the Administrative Commission

(in principle – eye readable format, see for MS on EC website)
II. Scheduled treatment

Article 20 of Regulation 883/2004

- **Prior authorisation** is **always** required:
  
  - Portable Document **S2**
  
  - If delivered – full reimbursement
  
  - Prior authorisation **cannot be refused** if:
    
    - “…treatment in question is among benefits provided for by the legislation of the MS where the person concerned resides”
    
    - “…cannot be given within a time limit which is medically justifiable, taking into account the current state of health and the probable course of the illness”
Who delivers the prior authorisation?

Article 20, 27 of Reg. 883 and 26 of Reg. 987

• Competent institution but...
• if a person resides outside the competent MS – asks for prior authorisation via the institution of the MS of residence but final decision taken by competent MS (special rules for urgent vitally necessary treatment).

Exception: pensioners and the members of the family of worker while residing in a MS receiving lump-sums (listed in annex 3 to Regulation 987/2009) the MS of residence decides on prior authorisation.
III. Residence outside the competent Member State

**Articles 17-18 Reg. 883 and Article 24 Reg. 987**

- Possibility of **transfer** of the residence – obligation of registration (Article 24 of Reg. 987/2009)
  - Portable Document S1

- Equal rights in the **MS of residence** as the person insured there

- Different scope of rights **when returning** to competent **MS**:
  - Insured persons (article 17 of Reg. 883/2004)
  - Member of the family of the frontier worker (Article 18(2) of Reg. 883/2004, Annex III to Regulation 883/2004)
  - Pensioners (Annex IV to Regulation 883/2004)
MS responsible for the healthcare of pensioner (Articles 23-25 of Regulation 883/2004)

- Pensioner receiving pension from only one MS
- Pensioner receiving two or more pensions, one of the in the MS of residence
- Pensioner receiving two or more pensions, and none of the from the MS of residence
Decisions of the Administrative Commission

S1, S2
• Concerning European Health Insurance Card

S3
• Concerning the benefits covered by Articles 19(1) and 27(1) of Reg. 883/2004 and Article 25(A)(3) of Reg. 987/2009

S4
• Concerning refund procedures for the implementation of Articles 35 and 41 of Regulation 883/2004

S5
• On interpretation of the concept of ‘benefit in kind

S6
• ‘Concerning the registration in the Member State of residence under Article 24 of Regulation 987/2009

S7
• Concerning the transition from Reg. 1408/71 and 574/72 to Reg. 883/2004 and 987/2009 and the application of reimbursement procedures

S8
• Concerning the substantial benefits in kind
Directive 2011/24/EU on patients' rights in cross border healthcare

- Planned and unplanned care – no formalities (no S1/EHIC) (but for some treatments, such as hospital, prior authorisation might still be required)

- Patients can access healthcare abroad provided by private providers

- Patients always need to pay upfront for the care received

- As a rule, patients get reimbursed up to the amount they would be entitled to in their home country

- Directive does not apply in the Member State of residence
Directive 2011/24/EU

- Information guarantees: National Contact Points; increase in information under the Directive;

- Procedural guarantees: Article 9 of Directive makes explicit administrative principles that should be applicable under both instruments.
Relationship Regulations – Directive - operating principles

- Regulations and Directive are two separate instruments with their own scopes of application

- When terms of Regulations are met, they apply, unless patient chooses otherwise

- Directive gives alternative rights in access to cross-border healthcare to those existing under Regulations:
  - patients have choice to access healthcare abroad
Relationship: Regulations – Directive - main differences

- Access to care provided by private providers
- No additional formalities
- Patients always need to pay upfront for the care received under the Directive
- As a rule, reimbursement up to the amount they would be entitled to in their home country.
Relationship: Regulations – Directive - challenges

Coexistence of two instruments with two sets of rules

- **For administrations**: interpretation, information to patients, systems of prior authorisations, classification, reimbursement level.

- **For healthcare providers**: information to patients, requirements towards patients (EHIC/S2, payment), tariffs.

- **For patients**: full and transparent information on their rights in order to be make sensible choice.
Process in the Commission

To support Member States and citizens

- Guidance note of the Commission (legal aspects) 2012
- Opportunities for MS to discuss bilaterally
- Meetings, workshops, discussions in the respective committees
  - lately: Working Party of the AC in October 2014
- Potential for further practical guidance for citizens
- Update of your Europe website (October 2013)
- EHIC campaigns / SANCO campaign on the Directive
Questions?

Thank you for your attention!