



EPHA Briefing Note to members

Subject	Consultation regarding Community action on health services
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On 26th September 2006, the European Commission released a consultation paper, entitled 'Consultation regarding Community action on health services'. In the paper the Commission calls for legal certainty and support for member states with regards to cross-border healthcare. The deadline for responses is 31st January 2007.

Background

Until 1998 there had been little discussion as to whether healthcare services should be considered within The Internal Market Treaty. However, this was to change following rulings on two cases by the European Court of Justice in 1998 which led to the confirmation that all medical care falls within the scope of free movement of the provision of services throughout the EU.

From the rulings the Court developed two principles in a bid to clarify what patients would be entitled to and the role of both the home and host member state:

- Any Patient can access non-hospital care in another member state which they are eligible for in their home state without prior authorisation for their home healthcare provider.
- Any patient wishing to access hospital care in another member state which they are eligible for in their home state can do so as, however they must seek prior authorisation from their home state before undertaking the hospital treatment in a different member state. The home state must allow the patient to access healthcare in another member state if their own healthcare system can not provide them with the required treatment within what is deemed a medically acceptable time limit.

In both of the above principles the patient will be reimbursed to the level of reimbursement provided by their own healthcare system.

Aims of the Consultation paper

The Commission's stated aim is to consult on the issues which need to be addressed through the Community action on health services, and the appropriate tools to be used for different topics.

The paper identifies several issues which the Commission asserts need further clarification, which include -

- how to balance patient's rights to cross-border healthcare with financial sustainability of member states;
- how to ensure effective financial compensation measures are in place;
- what practical issues need to be considered (language barriers, travel arrangements, etc.);
- how to enable citizens to make informed choices about providers;
- the likely impact of cross-border healthcare on social services and long-term care.



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Questions from the consultation paper

It is evident in the paper that the Commission has very little concrete data about cross-border healthcare and that it has no clear idea of whether patients would choose to be treated abroad or not. It states that in general patients prefer to be treated closer to home but then contradict this by stressing that many patients are interested in seeking healthcare abroad.

This confusion emphasises the need for all healthcare professionals, healthcare providers and particularly patient groups to respond to this consultation. It is essential that patient rights are recognised in discussions about cross-border healthcare and that decisions about healthcare services are made in order to benefit the patient. It is likely that any legislation formed from this consultation will be watered down by other Commission directorates, therefore it is vital that in responding to these questions you include as many real examples and as much concrete data on cross-border healthcare as possible.

Below are the questions and EPHA's breakdown of what they are asking for:

What is the current impact (local, regional, national) of cross-border healthcare on accessibility, quality and financial sustainability of healthcare systems, and how might this evolve?

- Have you as a patient group, healthcare professional or healthcare provider had experience of the impact of cross-border healthcare care on patients and/or local healthcare services? (Please provide evidence where possible)
- How do you think cross-border healthcare will impact on patients and healthcare services and what practical measures need to be addressed?

What specific legal clarification and what practical information is required by whom (e.g.; authorities, purchasers, providers, patients) to enable safe, high-quality and efficient cross-border healthcare?

- Is there a need for agreement on what is justified as an 'undue delay'?
- What information needs to be provided to enable patients and professionals to make informed choices about their treatment, and who should provide this information?
- What information is required by healthcare providers and what mechanisms will need to be in place to ensure health related data is available in other countries?

Which issues (e.g. clinical oversight, financial responsibility) should be the responsibility of the authorities of which country? Are these different for the different kinds of cross-border healthcare described in section 2.2 above?

- This question relates to the different kinds of cross-border healthcare: tele medicine and prescription services provided from another member state, the permanent presence of a healthcare provider in a host country, the temporary movement of the healthcare professional to the state of the patient. Which member state should be responsible for ensuring quality of health services and who should follow up complaints?
- The issue of continuity of care should be addressed here, i.e. who should be responsible for care when the patient returns to their home state or when the professional returns to their home state and how will this impact upon patient care?



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Who should be responsible for ensuring the safety in the case of cross-border healthcare? If the patients suffer harm, how should redress for patients be ensured?

- There is a need to establish whether the home or host state is responsible for compensating patients should they suffer harm and who should accept liability and follow up errors which have occurred.
- What measures should be put in place to make others aware of these errors and to ensure errors do not re-occur?

What action is needed to ensure that treating patients from other Member states is compatible with the provision of balanced medical and hospital services accessible to all?

- How can financial sustainability of the healthcare systems of member states be retained whilst ensuring that patient rights are met.

Are there further issues to be addressed in the specific context of health services regarding movement of health professionals or establishment of healthcare providers not already addressed by Community legislation?

- Do you envisage any problems related to the movement of healthcare professionals or for healthcare providers who set up a permanent establishment a host member state.

Are there any other issues where legal certainty should also be improved in the context of each specific health or social protection system? In particular, what improvements do stakeholders directly involved in receiving patients from other member states – such as healthcare providers and social security institutions – suggest in order to facilitate cross-border healthcare?

- Are there any other issues which you think need further clarification, i.e.: ethical issues, if a patient can not access certain healthcare services in their own country, should they be permitted to access that care in another member state where it is not un-ethical?
- Are there any issues which you feel should be considered in relation to the impact of cross-border healthcare on social services and what improvements if any should be made to make it easier for patients to take advantage of cross-border healthcare?

EPHA's Response

As the questions are addressing healthcare providers and professionals, patient groups and member states it is not appropriate for EPHA to respond to all of them. However there is a reference made to health promotion and prevention earlier in the paper and it is inevitable that cross-border healthcare will impact in some way on public health. Therefore EPHA will be responding to the last question. In our response we will be asserting the need to consider the impact of cross-border healthcare on the elderly and for those with long-term conditions.

Member states are not in favour of joined-up legislation and EPHA foresees a great deal of opposition to any form of legislation on cross-border healthcare. This emphasises yet again the need for all providers, professionals and patients to respond so that patient care and patient rights are considered, and not only the financial or political impact of cross-border healthcare.