

EU coordination of sickness benefits and free movement of patients

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Mavrovo April 2011

Overview

- Variety of health systems of the Member States (MSs)
- Basic notions
- Residence vs stay outside the competent MS (MS)
- New directive on the free movement of patients
- Special rules for pensioners including former frontier workers
- Financial arrangements

Variety of systems in the MSs

- Residence-based systems
- Employment-based systems
- Financing:
 - Contributions
 - General taxes
 - Mixed systems

Variety of systems in the MSs

- National health systems: access to medical care, free of charge
- Reimbursement system: patient pays first and is then (totally or partially) reimbursed (out of pocket payments)
- Variety also within each Member State
- Distinction between own rights and derived rights (family members)

Basic notions of EU sickness benefits coordination

- Distinction between *residence* and *stay*
 - Art. 1(j) BR (*Basic Regulation 883/2004*) : definition of *residence*: habitual residence
 - See also Art. 11 IR (*Implementing Regulation 987/2009*): elements to be taken into account to determine a person's *centre of interest*
 - Art. 1(k) BR: definition of *stay*: temporary residence
 - Tourists, family visits, business trips, travel with the purpose of receiving medical care,

Basic notions of EU sickness benefits coordination

- *Sickness benefits in kind*
 - Financial coverage of medical care
 - “benefits which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care” (Art. 1(va) BR)
 - Direct delivery, direct payment, reimbursement of medical care
 - Doctor; hospital; dentist; physiotherapist,

Basic notions of EU sickness benefits coordination

- *Sickness benefits in cash*
 - ❑ compensate for loss of income linked to an incapacity to work
 - ❑ financial aid which enables the standard of living of persons requiring care: *Care allowance* schemes

Basic notions of EU sickness benefits coordination

- *Members of the family*
- Art. 1(i)(1)(ii) BR: reference to definition in legislation of Member State of residence of the persons concerned
 - Crucial for derived rights
 - Choice of legislation of residence may be problematic if in the MS of residence the member of the family has own rights to sickness benefits in kind

Residence outside the competent state and sickness benefits in kind

- Art. 17 BR
 - Example: working in Germany and residing in Poland
 - Entitlement to benefits in accordance with the legislation of MS of residence
 - For instance is dental care covered or not
 - But at the expense of the competent MS
 - Competent MS will reimburse the costs borne by the MS of residence
 - Insured person must register in MS of residence

Residence outside the competent state and sickness benefits in kind

- Art. 18 BR: stay in competent MS (while residing in another MS)
 - Example: working in Austria, residing in Hungary and temporary staying in Austria
 - During this stay, the competent MS must deliver all care in accordance with its own legislation and at its own expense
 - Not for members of the family of frontier workers in the MSs listed in Annex III (currently 11 MSs)

Stay outside the competent state and *sickness benefits in kind* (Art. 19 BR)

- ❑ In MS of stay: entitlement to medical care that becomes necessary on medical grounds during the stay
 - Not scheduled care
 - Taking into account the nature of the care and the expected length of stay
 - To prevent the insured person from being forced to return home (Art. 25(3) IR)
- ❑ Entitlement to benefits in accordance with the legislation of MS of stay
- ❑ But at the expense of the competent MS

Stay outside the competent state and *sickness benefits in kind*

- Procedure: see Art. 25 IR
- *European Health Insurance Card*
 - Delivered by competent MS
 - Also in the event of residence outside the competent MS
 - Reimbursement system (Art. 25(4)-(6) IR)
 - In principle reimbursement must be applied for in MS of stay at its rates
 - But also possibility to apply for reimbursement in competent MS at its rates

Scheduled treatment outside the competent MS: Art. 20 BR

- Need for prior authorisation
- To be accorded by the competent MS where
 - the treatment is among the benefits provided for by the legislation of the MS of residence
 - the patient cannot be given such treatment within a time limit that is medically justifiable, taking into account the current state of health and the probable course of the illness
 - Medical assessment
- Procedural rules: see Art. 26 IR

Scheduled treatment outside the competent MS: free movement of patients

- Case law of the Court of Justice: *Kohll; Decker et seq.*
 - Application of the Treaty provisions on free movement of services
 - Including free movement of service recipients, such as patients seeking medical care
 - Need for prior authorization is an obstacle to the free movement of service recipients
 - Every obstacle to this free movement must be justified
 - For instance financial balance of the system
 - Planning of care would be undermined
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Scheduled treatment outside the competent MS: CJ's case law

- No authorization for non-hospital care allowed
 - Except in cases of expensive equipments (CJ judgment of 5.10.2010; *Commission v France*)
- Prior authorization possible for hospital care
 - Under conditions comparable to the ones in Art. 20(2) BR
 - the treatment is among the benefits provided for by the legislation of the MS of insurance
 - the patient cannot be given such treatment within a time limit which is medically justifiable, taking into account the current state of health and the probable course of the illness (medical assessment)

Scheduled treatment outside the competent MS: CJ's case law

- First, patient pays the bill in MS of treatment
- Reimbursement by the competent MS in accordance with its own legislation
 - only reimbursement rates of competent MS
- Compare “Regulation method”

New Directive 2011/...

- General principles (Article 7):
 - “MS of affiliation” shall insure the costs incurred by an insured person who receives cross-border health care
 - If the health care in question is among the benefits to which an insured person is entitled in the MS of affiliation
 - Reimbursement at the rates applicable by the MS of affiliation

New Directive 2011/...

- Prior authorization possible for (Article 8)
 - hospital care
 - highly specialised and cost-intensive care
 - treatment with particular risks for the patient or the population
 - health care that could give rise to serious and specific concerns relating to the quality or safety of the care
- Procedure under Reg. 883/2004 takes precedence

Sickness benefits in cash

- Art. 21 BR: export of benefits by the competent MS
- Example:
 - Care allowance exported by competent MS to frontier workers and their family members residing in another MS
 - Care allowance exported to pensioners
- Problem of distinction between benefits in cash and benefits in kind for the same purpose (long-term care): see Art. 34 BR

Special rules for pensioners

- Art. 23-30 BR
- Person receives pension of MS of residence
 - That MS is “competent MS”
 - Benefits in kind from and at the expense of MS of residence
 - *Example:* Spanish pensioner with pension from Germany, Austria and Spain: resides in Spain: Spain is the only “competent state”
 - Even if Spanish pension is a small one

Special rules for pensioners

- Person does not receive pension from MS of residence
 - “competent MS” is MS which pays a pension
 - If more than one MS: MS of longest period of insurance
 - *Example:* Spanish pensioner with pension from Germany, Austria and Spain: resides in Portugal: Germany is the only “competent state” if he had the longest career in Germany

Special rules for pensioners

- Entitlement to benefits in accordance with the legislation of MS of residence
- But at the expense of the competent MS
- Stay outside the competent MS (and residing in another MS)
 - *Example:* German pensioner, residing in Spain but staying in Italy
 - see other insured persons: medically necessary care (EHIC issued by Germany as the competent MS and at its expense)

Special rules for pensioners

- Stay in *competent MS* (and residing in another MS)
 - *Example:* German pensioner, residing in Spain but staying in Germany (for instance for a family visit)
 - full entitlement to medical care in competent MS, if this MS is listed in Annex IV (15 MSs)

Special rules for retired frontier workers (Art. 28 BR)

- A frontier worker who retires
 - In most situations: MS of residence becomes competent MS
 - impact on entitlement to medical care in MS of former employment: for instance for continuing to visit a doctor there
- Continuation of treatment guaranteed in former MS of employment (at the expense of the competent MS)

Payment of contributions by pensioners

- Article 30 BR
 - MS that is responsible for the costs of the sickness benefits in kind may request pensioners to pay contributions even if they reside elsewhere
 - These pensioners are entitled to the package of sickness benefits in kind in accordance with the legislation of the MS of residence
 - May be of less quality or quantity compared to the package of the MS to which they pay contributions
 - CJ: *van Delft* (C-345/09): not a problem

Reimbursement between institutions

- Full reimbursement between institutions (art. 35 BR)
- Based on actual expenditure (Art. 62 IR)
- Based on fixed amounts (flat rate reimbursements fixed per year)
 - For family members not residing with the insured person
 - For pensioners and their family members not residing in the competent MS
 - see list of MSs in Annex 3 to IR (9 MSs)

Conclusion

- Objective: Guarantee access to medical care in another MS than the competent MS
- Balance between freedom to choose care provider in any MS and the organisation of MSs' systems (such as planning and financing)
- Balance between the financial responsibilities of the MS

Thank you for your attention

And sorry that it is so complicated:
don't shoot the piano player