RESPONSE TO

EUROPEAN COMMISSION CONSULTATION ON CROSS BORDER CARE

JANUARY 2007

RESPONSE TO EUROPEAN COMMISSION CONSULTATION ON CROSS BORDER CARE: *"Consultation regarding Community action on health services" (Brussels, 26th September 2006)*

Introduction

Action against Medical Accidents (AvMA) is a UK charity promoting patient safety and justice. AvMA has been established for 25 years, during which time it has helped over 100,000 people affected by medical accidents and contributed to significant reform of legal systems dealing with clinical negligence and systems for improving patient safety and responding to the needs of injured patients. AvMA also works on a European level, liaising with patients' organisations of other member states, the European Patients Forum, and pan Europe initiatives and organisations such as the Simpatie project and PEOPIL (Pan European Organisation of Personal Injury Lawyers).

We have limited our response to the areas of specific concern to this charity and where we have sufficient expertise and experience.

RESPONSE TO CONSULTATION QUESTIONS

Question 2: ***what specific legal clarification and what practical information is required by whom (eg; authorities, purchasers, providers, patients) to enable safe, high-quality and efficient cross-border healthcare?***

In order that patients (and commissioners of services from member states) can make informed decisions about the quality and safety of healthcare across Europe, there needs to be harmonisation of quality standards and information that is available. For example, the following information should be publicly available:

- whether or not the healthcare provider has been accredited
- reports of accreditation assessments and/or monitoring reports
- the arrangements available for indemnifying patients should they be injured as a result of errors and omissions in care
- details of the complaints procedure
- performance data on successful/unsuccessful outcomes for specific procedures; infection rates; mortality data (all adequately and consistently explained)
- information on the qualifications, experience and success rates of individual clinicians and whether they have been subject to discipline/restriction by a regulatory body

Question 4 ***who should be responsible for ensuring safety in the case of cross-border healthcare? If patients suffer harm, how should redress for patients be ensured?***

AvMA believes that every citizen of the EU should be able to get expert, safe, high quality healthcare regardless of which member state they are treated in. This will mean the development of common standards and approaches to patient safety.

AvMA believes that a distinction should be drawn between emergency treatment and non-emergency, elective treatment in addressing this question.

Emergency Treatment

Every EU citizen is entitled to free emergency medical treatment if taken ill or experiencing an accident in another member state. By 'Emergency medical treatment' we mean treatment which is necessary immediately in order to reduce risk of permanent damage to health, or relieve pain. The access to such treatment should not be delayed or compromised by issues other than clinical need.

If treatment received in another member state is considered unsatisfactory, every EU citizen should be entitled to an investigation via the healthcare provider's complaints procedure which provides a full, open and honest explanation as to whether there had been any errors or omissions in the treatment. Each member state should require healthcare providers to have a robust complaints procedure which is consistent across the EU. The procedure should set reasonable time limits for investigating and responding to complaints and provide for an independent review of the complaint by another body if the patient/family is unhappy with the response.

Each member state should consider, in line with the recommendation of the Council of Europe, providing a scheme for providing compensation to patients/families affected by sub-standard care, without having to take legal action. This procedure should be open to patients of other member states injured in that member state.

Legal liability for injuries caused by negligent emergency treatment to a citizen of another member state should rest with the health provider in the state where the treatment was provided.

Non-Emergency/Elective Treatment

We believe non-emergency elective treatment falls into three categories:

a) where a patient chooses to have treatment carried out in another member state even though the treatment is available, within a reasonable timescale, within their own state provision.

b) Where there is a clinical need for the treatment to be conducted in another member state because it is not available within a reasonable timeframe in their own state. A 'reasonable timeframe' is one within which the patient's health/prognosis is not significantly put at risk.

c) Where a member state has made arrangements for treatment to be made available in another member state as part of its own arrangements for providing access to healthcare for its citizens (e.g. waiting list initiatives).

In scenario (a) the citizen effectively contracts with the health provider in another state. The health provider should have legal liability for the standard of care provided. The citizen should have the same access to complaints procedures, and access to legal remedies/ compensation schemes as any citizen of the state where the care was provided.

In scenario (b), there should be a right for the patient to avail themselves of the treatment in another state at no more cost to them than would have been the case if the treatment were being provided in their own state. The citizen's member state should be obliged to arrange

the treatment in the other member state, and through its contractual arrangement ensure that it indemnifies the patient itself for any damage which may arise as a result of sub-standard treatment (e.g. the patient should be able to access compensation as easily as possible through their own state, as the commissioner of the care).

In scenario (c), as with (b), the citizen's own state must ensure there is indemnity and take responsibility should there be harm caused as a result of error or omission in care.

Other issues which need to be addressed in order to ensure appropriate consistency in rights to redress/compensation for all EU citizens are:

- Harmonisation of limitation legislation for civil legal action across the EU.

- Ensuring the availability of legal aid for civil legal action across the EU, especially in medical negligence and Human Rights cases concerning health care .

Question 6 ***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?***

AvMA has particular concerns about the lack of safeguards regarding the movement of health professionals. As envisaged in the document, health professionals are likely to be able to move between member states to provide health services. When this happens, it is imperative that regulators of health professionals (e.g. the General Medical Council and Nursing & Midwifery Council in the UK) are able to ensure that any health professional operating within the member state for which they have responsibility is fit to practice.

This can only be achieved if there is more harmonisation of the standards in EU states concerning fitness to practice and sharing of information between member states about health professionals. We therefore call on the EU to place a legal duty on bodies with responsibility for the regulation of health professionals in EU states to adopt consistent standards and exchange disciplinary and registration information about health professionals and to act on it. Without such a legal duty, health profession regulators will not be able to perform their duty to ensure the safety of patients from a tiny minority of health professionals who are not fit to practice and who could exploit free movement rights.