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Protection, Directorate-General  
Health services consultation  
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ONDERWERP

Reaction of the Royal Dutch Medical Association on the  
Consultation regarding Community action on health services  
(Sec(2006)1195/4)

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31 januari 2007

1. *Current impact of cross-border healthcare on accessibility, quality and  
financial sustainability of healthcare systems, and how might this evolve?*

There is a apparent lack of reliable data on the current nature and extent of cross-border healthcare in the Netherlands and this probably applies to all EU-member states. Therefore it seems impossible to give a substantiated answer to this question, except that so far no apparent problems have arisen in the Netherlands. More information on the incentives and disincentives for patients to opt for cross-border healthcare would be helpful in order to develop scenario's on the potential nature and extent of cross-border movements of patients. The same applies for the incentives and disincentives for health care professionals to opt for the provision of cross-border health care. We believe it is imperative to have such information and scenario's in order to make a thorough assessment of the impact of cross-border health care, either by means of patients moving to another country, by means of health care professionals moving to another country or by means of ICT-involvement of a health care professional in another country in the care of patients. This information could also provide a basis for the development of instruments to facilitate cross-border healthcare and/or to mitigate the possible negative effects. To a great extent our opinion on the desirability of any increase in of cross-border patient mobility depends on the answers to questions such as: Which patients would/could profit? At what costs? To what extent would the accessibility, quality and sustainability of the health care system be jeopardized and what would be the consequences for patients that can not profit from cross-border health care? What is the relevance of distinctions made between ambulatory and hospital care? What would be the least restrictive strategies and relevant instruments to prevent negative consequences?

As for the principles involved: we would advocate that every patient has a right to appropriate health care of good quality at a convenient, accessible location. For the majority of patients we estimate that this implies access to appropriate health care in their home country. It is imperative that the national health care system is adequately equipped to meet the legitimate needs of the population. Due to many impediments such as language barriers and financial problems, only 'the happy few' are probably willing and able to travel abroad in order to receive appropriate health care. The right to (reimbursement of) cross-border health care therefore should not be overemphasized and should only be considered as an additional means to overcome – temporary – problems in timely access to appropriate health care. It should not become an excuse for not solving clear deficiencies in the way the national health care system works.

REFERENTIE  
LMa / 07-11370

KNMG  
Lomanlaan 103  
Postbus 20051  
3502 LB Utrecht

TELEFOON  
030-28 23 274

FAX  
030-28 23 326

EMAIL  
l.markenstein@fed.knmg.nl

WEBSITE  
www.knmg.nl

REKENINGNUMMER  
Bank 45.64.48.969

In general we consider increased cross-border health care by means of health care professionals moving to other members states - on a temporary or part-time basis - or by means of ICT-consulting the expertise of a health care professional in another country as a - compared to patient mobility - more viable way ahead. We subscribe to the analysis of the European Commission that many unnecessary barriers exist for this kind of cross-border health care that need to be taken away, even though we are not in favor of the solution proposed by the European Commission (in the context of the (General) Directive on Services) to adopt the principle of 'host country rule'. A more balanced approach is necessary and probably harmonization of requirements in order to guarantee the quality of cross-border health care is called for. In our opinion a different situation exists and a different approach is appropriate in border regions. In border regions clear benefits in access, quality and efficiency of health care can be achieved by taking away unnecessary barriers due to divergent national health care (insurance and financing) systems of the member states involved/disparities in the national health care systems. To the extent in which this is not achieved by bilateral agreements between the member states involved, additional action of the EU to facilitate this would be welcome.

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2. *What specific legal clarification and what practical information is required by whom to enable safe, high-quality and efficient cross-border healthcare?*

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In order to facilitate cross-border provision of health care by health professionals (moving to another member state or being involved through ICT in the care of patients in another member state) legal clarification is needed on questions such as: Which legal rules are applicable (host country, home country)? We would prefer: specific harmonized rules for cross-border health care delivery.

Practical information should be made available to health care providers as to the administrative procedures in the host country they are required to meet in order to be able to practice medicine; rules on fees; health insurance law; the applicable liability(-insurance) rules; ethical requirements and patients rights; rules on quality assurance and supervision. Preferably each member state should have one contact point that provides comprehensive information on such issues.

We think it is imperative that 'competent authorities' in member states have adequate tools to supervise health care professionals that provide cross-border health care in their country. This implies a requirement to register with a 'competent authority' in order to be allowed to deliver health care in a member state. And it implies adequate exchange of information between competent authorities about any restrictions in the 'license to practice' of health care professionals.

Basic conditions for facilitating patient mobility are:

- a. Adequate exchange of patient records with relevant data (preferably based on standards that avoid misinterpretations)
- b. Adequate information for patients to make an informed choice on the advantages and disadvantages of receiving health care abroad; patients' organizations can play an important role in this field
- c. Clarity on rules for filing complaints and liability procedures
- d. Clarity on applicable quality standards and quality supervision mechanisms

3. *Which issues should be the responsibility of the authorities of which country?*

We do not subscribe to the principle of 'home country rules' for cross-border health care delivery, even though it would be the easiest way to facilitate mobility of health care professionals. We believe that health care services are of such a

delicate/sensitive nature that the 'host country' must have adequate tools to uphold its (minimum-)standards of quality. We subscribe to the analysis of the European Commission that maintaining 'host country rule' will probably imply many unnecessary barriers for cross-border health care delivery. Therefore we support any efforts at a European level to define which type of rules are necessary/relevant and which are disproportionate/redundant to safeguard the legitimate interests of member states to uphold (minimum-)standards of quality of health care delivery in their country.

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?*

In our opinion the 'host country' should keep the responsibility (and tools) for ensuring safety in the case of cross-border health care.

Redress for patients who suffer harm during cross-border health care delivery is an issue that requires some amount of harmonization at a European level since liability-systems and rules vary widely among the member states. Both patients and health care professionals should have legal certainty in advance over these issues and adequate liability-insurance can be considered a minimum-requirement in cross-border health care delivery.

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

The type and extent of action necessary should be tailored to and be not disproportionate in view of the type and extent of the threat posed by patient mobility to the national health care system. This could be different in different member states depending on the characteristics of their system for planning and financing health care; wealth; probability and amount of patients wanting to receive health care abroad; probability and amount of patients from other member states that want to receive health care in this particular member state etc. Without adequate data, analysis and scenario's the necessary type and extent of action can not be identified.

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?*

Community legislation so far has dealt with issues of mutual recognition of professional qualifications, which is a very important component of mobility of health professionals. But levels of and mechanisms for quality assurance have developed beyond the issue of initial qualification and have gone into the area of continuing medical education and professional development. Such aspects are very important in the context of professional mobility, but not yet covered by Community legislation. We would welcome community action in this field in order to harmonize requirements for continuing efforts to uphold and update professional competencies.

7. *Are there other issues where legal certainty should also be improved in the context of each specific health or social protection system?*

No comments

8. *In what way should European action help support the health systems of the member states and the different actors within them? Are there areas not identified above?*

No comments

9. *What tools would be appropriate to tackle the different issues related to health services at EU level? What issues should be addressed through Community legislation and what through non-legal means?*

For several reasons we are of the opinion that advocating unrestricted patient mobility is not in the interest of patients in the member states of the EU. The rulings of the ECJ contain several restrictions to free movement of patients, which we support.

We subscribe to the necessity of a common legal framework to provide clarification on what the implications of the rulings of the European Court of Justice are on the rights of patients to receive reimbursement for health care services received abroad. Such a common legal framework is the only way to avoid a broad variety of different interpretations being given to the rulings of the Court in different Member States. This variety in interpretations could lead to unacceptable differences in rights being attributed to citizens in different Member States.

However it must be recognized that substantial differences exist between Member States in the extent to which they need and/or want to protect their national health care system against the potential disruptive effects of extended patient mobility. It will be very important to define the restrictions to the way (extent and instruments) in which Member States will be allowed to provide such protections.

In our view, gathering of the relevant data and conducting scenario studies should be made a high priority in the EU. Analysis of such data could provide a more solid basis to decide on appropriate means of protecting national systems against potential disruptive effects of patient mobility.

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Kind regards,

Dr. L. Wigersma  
Director of Policy and Advise Department, Royal Dutch Medical Association

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