Final Draft 26th January 2007

The European Commission's Public Consultation on Cross-border Healthcare: response by the Healthcare Commission.

The response below focuses on issues which the Healthcare Commission has specific experience or expertise, from the perspective of being the main regulator of healthcare in England.

The Healthcare Commission has a wide range of responsibilities, aimed at improving the quality of healthcare provided to patients. We have a statutory duty to assess the performance of healthcare organisations, award annual performance ratings for the NHS and coordinate reviews of healthcare by others.

General comments

- We agree that the issue of cross-border healthcare is of growing importance, with an expanding EC membership, which with easier transport links encourages more movement of patients and health professionals between EU member states. It has particular important challenges for healthcare systems designed to be free at-the-point-of-use and funded by general taxation, such as the NHS. We are aware that such systems are in a minority in the EC. These systems are based on an assumption about universal entitlement, which is becoming less true as patient mobility increases across international borders. Universal entitlement is a fundamental founding principle of the NHS and is still, and always has been supportive by, all the main UK political parties.

- We can see that there is a tension on cross-border healthcare between the individual's right to seek healthcare and ensuring the financial sustainability of individual health systems. Also we recognise that the features of the NHS being a free-at-the- point-of-use service funded from national taxation means that it is strong on offering open access but weak on testing entitlement. There is a need to establish within the UK system more of a balance in the management of these issues.

- We would welcome clarification of the legal entitlement of patients from different EU states being treated in others. However we recognise the complexity of comparing entitlement under different healthcare systems and the need for a standard way to classify these. We would assume entitlement would largely depend on the extent and quality of services available to the individual in the home state. How to then practically ensure compliance with any rules derived in terms of only treating patients according to their entitlement appears a much tougher question. The Healthcare Commission (HC) would therefore support the principle of prior authorisation as one means to manage this issue.

- We believe there is an urgent need for further research co-ordinated across the EC by member governments, to quantify the numbers of patient's involved by country (both "imported" and "exported") and the financial sums involved. Also, if this work justifies it, to consider how to collect data to monitor trends in the numbers and costs to alert policy makers and healthcare organisations to the importance of the issues involved, also advice on good management practices. As well it might be worthwhile investigating learning from

insurance-based and independent funded services on developing effective approaches to test and manage patient entitlement (e.g. patient identity card to gain access).

- We agree with the Confederations' six key principles in particular:

    - the principle of **subsiduarity** – the English health system has evolved to suit the specific needs of the public and patients in England. Its performance is comparable with other member states in terms of health outcomes. We would observe that there are wide differences between the different systems in the different member countries because of the different history and factors shaping the development of the systems. Therefore the Healthcare Commission believes that each state is best placed to manage and regulate its own healthcare system. We would therefore not support the move towards any European-wide regulator to address these issues. However there is a need for some co-ordination between member states in gathering data in a standardised way and ensuring methods of reimbursement are clear across EU states.

    - **Cost implications**. We believe in the principle that those who pay for healthcare should set the standards by which it should be delivered. Therefore this should be member states rather than the EU, with the former having the freedom to decide on the level of funding based on democratic mandate. Also as a regulator we support, and put into practice, the principle that regulation should be risk-based and proportionate. Therefore where possible any regulation based on this issue should only be carried out where other methods will be less effective, use existing mechanisms where possible and the benefits must exceed the cost.
    - **Equity**. We agree with the NHS Confederation principle of equity between citizens with clinical need as the criteria for access to services, rather than the capability to travel.

<u>Specific issues</u>

Specific issues we would like to comment on include:

- **Licensing/registration of services**
    - The consultation raises the issue as to whether national standards for public-funded services, used when registering/licensing care providers and set in England by Government, should include assessing whether providers and commissioners have systems to check patient entitlement and methods to recover funds. In England this assessment would be by the regulator, and if it is risk-based, might only be tested in geographic areas where there is likely to be many patients seeking NHS care from a UK-based provider whose main customer base is NHS funded patients.
    - In order to underpin this there is the need for clarity in guidance to healthcare providers and commissioners as to the entitlement of patients from specific EU countries seeking NHS care from a UK-based provider whose main customer base is NHS funded patients.
    - Also the means by which to claim reimbursement, as well as the methods for redress in the event of non-payment. We assume this will require agreement between the EU member states.

- We would see the setting of standards for healthcare to be an issue for host governments, as standards must relate to the level of expenditure set by each member state's government.

- **Patient safety – assessing services against standards**

  - The Healthcare Commission currently assesses providers of public funded and private funded healthcare. From our experience we believe that the host country's regulator, or similar assessment system, would be best placed to assess services for safety. This information needs to be combined with information on the status of individual professionals. Should all EU member states be in a position to provide this information?

  - **Transparency and information for patients.** The results of these assessments for individual services need to be available beyond the host country to allow patients from other countries to be assured about the safety and quality of services. This may mean the need to report this information in languages other than the host country language. This will have additional costs for the body reporting on standards that needs to be funded, for which an option would be to include in any charge on patients who do not have free entitlement. Additionally host governments would seem to be well placed to collate this information and make it available for patients from host countries. Again this will incur costs, possibly best funded by host governments. There is an issue about whether all EU member states are in a position to provide this information.
  - **The differences in languages might also adversely affect the quality of care.** It could increase communication problems between the patient and clinicians before (e.g. incomplete clinical history), during and after treatment. This may increase front-line service costs, as well as levels of litigation. These risks need to be made clear to patients when considering seeking treatment in other EU member states.
  - If patients choose to travel for care we support the principle that **caveat emptor** (let the buyer beware) applies, the host member state is not responsible if something goes wrong and the standards of care of the receiving country apply. However there would need to be clarity on what actions to take if things do go wrong, which would need to be available in all member state languages by host governments.
- **Access to services and entitlement**
  - We recognise that establishing entitlement assumes that the same access to services is uniform across England, whereas we recognise that there are variations across areas, often referred to as "the postcode lottery", and that these will probably always exist.
  - There is an issues as to whether in the host country of a health provider the regulator should be active in testing whether providers have systems in place to test entitlement in its service reviews, particularly in geographic areas were with a high proportion of non-UK residents:
    - there is fair access to services by all people from EC states based on their entitlement
    - that only EC nationals have access to services (and not those of other countries)

- as a practical way forward we support the notion of Prior Authorisation by relevant funding body (e.g. PCTs in England).
- Also there is an issue about whether the same procedure will have different costs in different countries and how this affects the entitlement of patients seeking treatment in other EU member states.

- **Financial sustainability**
  - The HC support the principle that money should follow the patient, including across EU member states
  - In England the Healthcare Commission has responsibility for monitoring to ensure that NHS providers (other than Foundation Trusts) stay in financial balance.
  - Also we recognise the implications for achieving financial balance for a provider, particularly in parts of England were a high proportion of patients are from other EU or non-EU countries.
  - There might be a role for the regulator in testing whether providers and commissioners have satisfactory financial recovery systems in the Annual Health Check.

Answers to EC Consultation questions

1. What is the current impact?

This needs further research as most of the evidence appears to be not quantified nor expressed in financial terms (e.g. “nearly half a million people from new member states in eastern Europe have arrived in the last two years and this has put a severe strain on NHS services in some areas”)

2. What specific legal clarification and what practical information are required by whom?

The entitlement level to services of nationals seeking to be treated in other EU states should be determined by the host state. This would help both patients travelling to other EU states to be clear what to expect (e.g. physiotherapy after hip replacement) as well as for services in receiving countries to help plan the consequences of a certain number of patients arriving from specific EU states.

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

We would suggest:

Home country of patient

- Clarify patient’s entitlement at home and abroad so that prior authorisation can be determined.
- Follow-up requests from other EU countries when there are problems over them receiving their re-imbursement from treating patients from the home country.

Host country of service

- Licensing of providers and professionals
- Information on the safety and quality of services
- Planning and funding of services based on levels of expected demand
- Advice to providers as to methods to request re-imbursement
- Support development of methods to check patient entitlement at point-of-care
- Build system to distribute reimbursed fees to providers

Patient

- Caveat emptor
- Obtain information on services entitled to in other EU states
- Any additional travel costs over and above those normally reimbursable in the UK

EC

- Agreement to provide information to EU patients about healthcare services in all EU states
- Co-ordinate provision of information to EU members on the effects (e.g. financial, numbers of patients, etc)

4. Who should be responsible for ensuring safety?

Host country in which the care is received with process of redress clear, as well as caveat emptor principle applying.

5. What action is needed to ensure compatibility with services accessible to all?

- clarity of eligibility of patients from different countries
- host country to determine eligibility through prior authorisation
- practical methods at point of care to test eligibility
- clear system to get reimbursement back from patient's host country
- system to distribute funding back to frontline service providers.

6. What issues are to do with movement of health professionals or establishment of health providers?

Licensing arrangements are needed for both. Registration requirements are in place now for professional staff, although the testing of language skills is usually left to individual employers. The regulator in the host country has a role in ensuring that for locum and out-of-hours services any staff used from other EU countries have sufficient language skills to communicate with patients and professional colleagues.. Also any provider organisation needs to be licensed in the country in which they provide the service. Given the different roles of professionals and organisation structures across EU member states these arrangements are best managed by each member state. Although within any state both need to be aligned.

7. Improvements suggested by stakeholders directly involved with treating patients?

Not applicable.

8. In what ways would European action help?

By the co-ordination of information for patients on services and its translation.

9. What tool appropriate to address issues at EU level? Which should be addressed through Community legislation and which through other means?

Non-legislative route is preferable, although may need statutory powers to ensure data collected on services across all EU states. Enforcement would be best by individual member states.

Other relevant questions/issues

I attach web-link to the Healthcare Commission website that explains in more detail the organisation's role http://www.healthcarecommission.org.uk/ . If you would like to discuss these issues further please contact: Paul Durham, Strategy Group, Healthcare Commission, 020 7448 9305, paul.durham@healthcarecommission.org.uk