



Department  
of Health

# Directive 2011/24/EU – on patients' rights in cross-border healthcare

*UK Implementation, Barriers & Policy Challenges*

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Cross-border Healthcare Committee – 11 March 2016

## Described as....

*“...the most significant and wide-ranging European health legislation in a generation.”*

# Article by article

- Art 3 – Definitions (definition of healthcare v. wide)
- Art 4 – Requirements on providers & MS of treatment
- Art 5 – Responsibilities on MS of affiliation; patient information (inc. on entitlements)
- Art 6 – Set up and functions of National Contact Point
- Art 7 – (Patient) reimbursement rules and principles
- Art 8 – Prior authorisation systems & criteria for refusal
- Art 9 – Administrative arrangements
- Art 10 – MS cooperation (exchange of information etc)
- Art 11 – Prescription recognition
- Arts 12 to 15 – “Voluntary” arrangements – European Reference Networks; Rare Disease; ehealth; Health Technology Assessment

# What it means for citizens

- DG SANTE's flagship health policy – goes further than all previous arrangements
- Codifies existing CJEU case law
- EU-wide legal framework confirming patients' rights & entitlements
- Requires MS to provide citizens with clearly understandable / accessible procedures
- Clarifies prior authorisation & reimbursement principles
- Ensures access to information via National Contact Points
- Sweeps away obstacles to freedom of movement
- **(Hoped-for) Result: Greater choice / empowered citizens**

**However: Lack of clarity on many areas of crossover with coordination regulations**

# But the punters remain confused....

Are foreign providers/clinicians safe?

Is there someone who can make all the arrangements?

Am I entitled to the treatment?

Can I get help with travel costs?

I can't afford to pay up front?

How much will I be reimbursed?

What about treatments not approved by NICE?

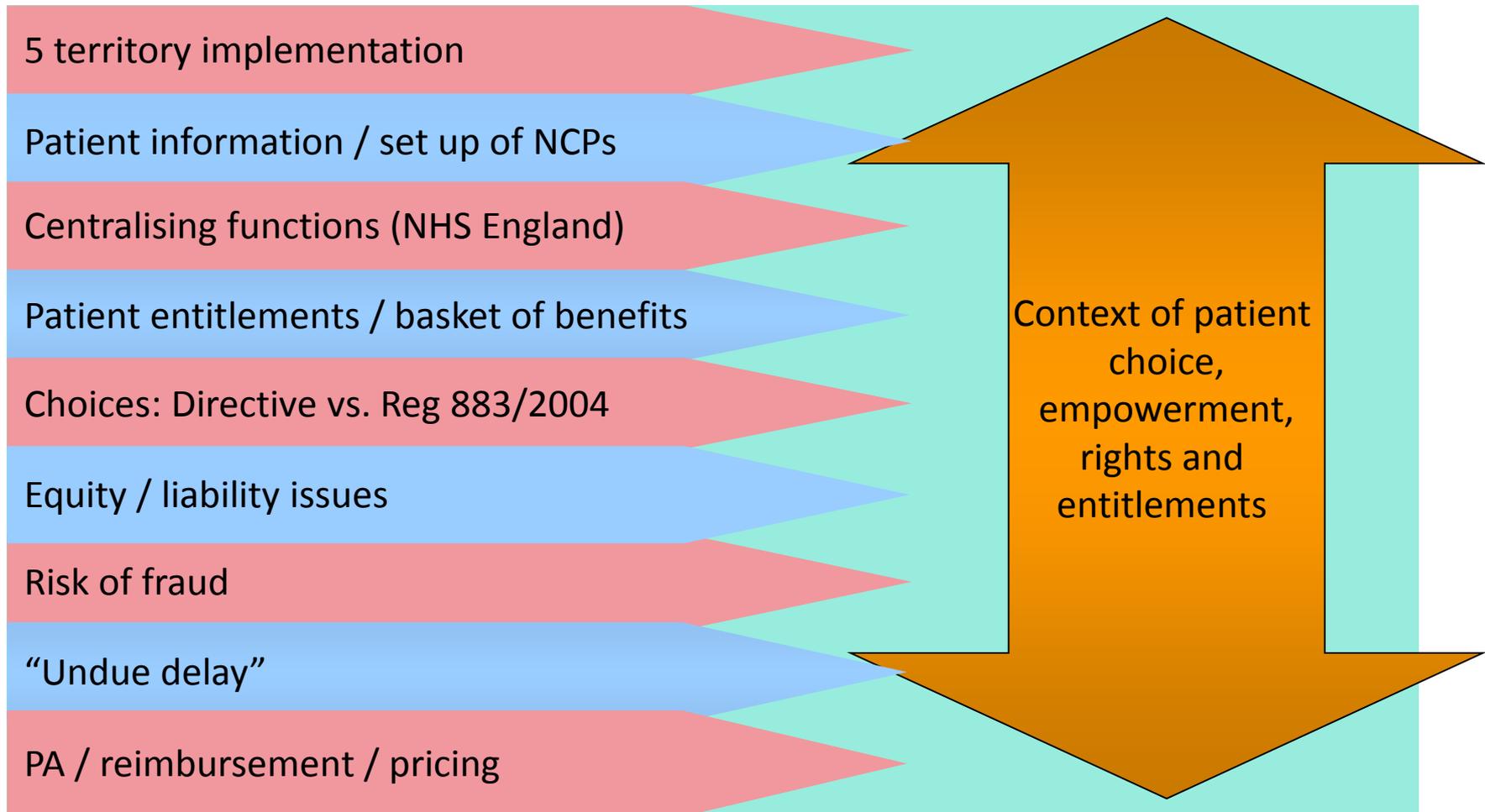
Where can I get more information?

What if something goes wrong?

What are the clinical success rates?



# Key (UK) policy & delivery issues



# The Directive's positive effects?

- Patient / Citizen focused: covers all healthcare (including private)
- First ever EU-wide legal framework confirming patients' rights & entitlements
- Requires MS to provide citizens with clearly understandable / accessible procedures
- Ensures access to information via National Contact Points
- Sweeps away obstacles to freedom of movement - effectively extends patient choice to Europe & creates a personal health budget
- Greater choice / empowered citizens
- Opportunities for UK providers – e.g. ERNs
- Lever for improvements in NHS provision?
- Pockets of strong collaboration between member state experts
- Has contributed to shaping healthcare reform in many EU countries

# The Directive's negative effects?

- Low numbers, so Directive a disproportionate response?
- Limited grounds to refuse (or even require) prior authorisation
- Reduces healthcare to a purchase / reimbursement arrangement
- Power in the hands of patients & clinicians – not national authorities
- Inequity – those that can afford to pay up front take an advantage from earlier treatment
- The act of reimbursement is money leaving the NHS – does not recirculate
- Patients are on their own
- Rise of third party operators / facilitators
- Liability issues (currently untested)
- Complicated administration (decoding foreign receipts etc)
- Risk of fraud & error

# Invoicing & potential for fraud

## *By healthcare professionals/providers*

- Falsifying credentials, employment history or registration status;
- Billing for services that were never delivered - either by using genuine patient information, perhaps obtained through identity theft, to fabricate entire claims or by padding claims with charges for procedures that did not take place;
- Unbundling - billing each step of a procedure as if it were a separate procedure;
- Misrepresenting procedures performed to obtain payment for non-covered services (e.g. cosmetic surgery);
- Billing for more expensive services or procedures than those that were actually provided;
- Falsifying a patient's diagnosis to justify tests or other procedures that are not medically necessary;
- Establishing bogus clinics/hospitals in order to bill for treatments that were never provided;
- Pharmacists dividing prescriptions into smaller amounts in order to claim additional dispensing fees (may require collusion with GP?);
- Alteration of prescriptions, claiming for work not undertaken, creation of ghost patients and fraudulent claims for out-of-hours treatments;
- Clinicians accepting 'kickbacks' for patient referrals;
- Risk of organised cartels to restrict treatments or to artificially raise prices;
- Ambulance services automatically taking patients to private hospitals where EHIC not accepted;
- Low value invoice fraud (i.e. designed to be of a sufficient low financial level to be unnoticeable)

# Invoicing & potential for fraud

## *By patients and the public*

- Use of a stolen identity in order to gain entitlement to treatment;
- “Opportunist” fraud (e.g. patient buying cosmetics who submits the pharmacy credit card voucher and claims that it was for a repeat prescription);
- Patient inflating the services represented on a claim;
- Wrongful claiming of exemption from fees, alteration of prescriptions or use of aliases to obtain e.g. controlled drugs;
- Fraudulent claims for travel costs expenses (for journeys never made or made using an alternative mode of transport)
- EHIC, S2 or insurance fraud – i.e. an attempt to claim under the Directive for treatments/items covered by EHIC/S2/insurance.

## *By third-party intermediaries*

- Falsified claim/application forms;
- Collusion with local clinicians & payment of “kickbacks” for guaranteed referrals;
- False invoices for services not actually provided;
- Inflated prices.

# Looking ahead...

- Directive a key piece of EU-wide health legislation
- Complex policy challenges; many and varied implementation & delivery issues – plus risk of fraud
- Conflict & confusion: Directive vs SS Coordination Regulations
- Need to address problems & issues to avoid Directive falling into disrepute at an early stage
- Crucial for DG SANTE, member state Health Departments & Ministries to be (and stay) engaged
- Cross-border Healthcare Committee the pre-eminent forum for decision making / policy and implementation discussion between DG SANTE and member state policy leads / experts
- Re-establishing the Committee deemed essential
- In turn, significant question marks over the role, purpose, legitimacy and future of NCP Forum

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