

Cross-border health care

Prior authorisation: Rapporteur rejects Council's criteria

By Sophie Petitjean | Wednesday 29 September 2010



Having presented to colleagues her recommendations on cross-border health care for a second reading, on 28 September, French rapporteur Françoise Grossetête (EPP) made known that she would be uncompromising on the issue of prior authorisation. While she does not question this principle, she rejects the quality and security criteria added by the Council, which would make it possible for a member state to arbitrarily refuse to grant authorisation to a patient. “I believe that this criterion is unacceptable because it would make it possible for prior authorisation to be refused at any time without explanation. It is inconceivable and would, in the end, lead to new appeals before the European Court of Justice”.

The objective of the proposal for a directive is, however, to standardise case law of the Court of Justice of the European Union and avoid the ambiguity faced by patients. The Commission is thus attempting to clarify the rights of patients treated in another member state, including the issue of the reimbursement of care. As a general principle, it establishes that patients treated in another member state will receive the same level of reimbursement anticipated for the same treatment or for a similar treatment in their national health system, if they are entitled to this treatment in their country of affiliation. Nevertheless, the member state of affiliation may limit the application of rules relating to the reimbursement of cross-border health care by demanding prior authorisation for certain treatments. According to the rapporteur, prior authorisation must be based on the need for health care planning and rationalisation, but cannot be abused in order to deny patients the right to travel for treatment. She therefore proposes limiting prior authorisation to hospital treatment (a stay of more than one night in hospital), specialised care (specific tools) or treatment that poses a particular risk to the patient or the population.

FLEXIBILITY...

Grossetête believes that this text must be urgently concluded under the best possible conditions because the question has been open for too long (see box). By introducing her report to the parliamentary Committee on Environment and Public Health (ENVI), the deputy thus reassured member states by insisting on respect of the subsidiarity principle. “I also want to reassure sceptics on the inflation of care since this text concerns less than one per cent of the European population, most people preferring to be treated at home. And with prior authorisation and reimbursement, the member state of affiliation contingent on what it would itself have reimbursed, we are answering the concerns [of those who think that this will become unmanageable]”.

Grossetête also showed herself to be accommodating with regard to the legal basis and the issue of pensioners. She called on her colleagues to accept the idea of a dual legal basis, as proposed by the Council, ie a balance between the Court of Justice's case law on the application of Article 114

(internal market) for health services and the treaty's recognition of the competences of member states with regard to the organisation and supply of health services (Article 168 on public health). She believes that specific provisions for pensioners, an issue that the European Parliament had not dealt with separately at first reading, could also appear in the text. In accordance with the Council's position, it would therefore be up to the member state of residence to reimburse health care costs to pensioners except if they are receiving treatment in their country of origin, in which case it is up to the country of origin to provide and pay for care.

... AND INTRANSIGENCE

On the other hand, however, Grossetête calls on the Council to accept certain provisions that are dear to the Parliament. She will, in any case, be intransigent on the issue of rare diseases, which must be the subject of exceptions, as well as on that of advance payment.

She wishes that patients suffering from rare diseases could have access to care in another member state and be reimbursed, even if this treatment is not provided in their member state. Likewise, these diseases must not be subject to prior authorisation.

On the second question, which does not appear in the Council's position, the report stipulates that patients who have obtained prior authorisation must provide advance payment to the member state of treatment only if such a payment is also required in the member state of affiliation.

Lastly, the rapporteur calls on the Council to pay greater attention to the potential of health care online.

The plenary vote will take place during the Strasbourg session of 27 and 28 October.

Background

The question of the application of the principles of the free movement of health services, which was the subject of several rulings by the European Court of Justice, is not new: in 2004, it had been the subject of several provisions in the proposal for a directive on services in the internal market before being rejected. In 2008, the Commission presented a proposal specifically devoted to the application of patients' rights in terms of cross-border health care. While Parliament had quickly postponed its position at first reading, this case had collapsed at the 2009 Council following disagreement on the issue of the reimbursement of care given by unconventional providers and that of the reimbursement of care granted to pensioners residing abroad (see *Europolitics*4037). These disagreements had been overcome thanks to a proposal for a compromise by the Spanish EU Presidency, in June 2010.