The future of cross-border patient mobility in the EU

Medical tourism has recently grown at an explosive pace driven by American insurances that offer reductions to policy-holders who are willing to be treated in other countries. In Europe, the number of patients that wants to be treated outside their country is fairly limited (it accounts for about 1% of total health expenditure) but it may grow significantly in the near future, especially if some of the legal and economic barriers to mobility are removed.

The new “Directive on patients’ rights in cross-border healthcare” should have promoted cross-border health care and patients’ choice. However, this has not been the case for several reasons:

> The Directive, (which had to be implemented by 25 October 2013 at latest) has not yet been fully implemented in all the Member States; (update: at the moment, the Commission is checking correctness of implementation).
> Patients have to pay up-front, which may imply that income becomes a powerful barrier to access cross-border care.
> The economic recession and EU enlargement have widened the gap between “rich” and “poor” countries around Europe.

In this context, the European Court of Justice has acted as the main policy maker through its court decisions. Those court decisions have paved the way for a set of patients’ rights in cross-border healthcare (now codified in this Directive). Patients are basically entitled to the same treatment abroad and up to the same level of costs, as if they had received treatment at home. In certain situations they have to ask for prior-authorisation, before being allowed to seek treatment abroad (and get reimbursement afterwards). Only if the treatment cannot be given in “due time”, the patient is allowed to seek treatment abroad.

In the Petru case the Court had to decide if this exception (patient allowed to go abroad due to long waiting time) also applies in case of an alleged lack of basic infrastructure (painkillers, disinfectant etc.).

It has to be emphasized, that there is a basic difference between the first court cases and this latest one (Petru). The first claims derived from patients living in healthy countries, where the cost of their decisions would not have reduced the resources available to treat the rest of the community. The EU enlargement to 28 countries has meant that cross-border care may become a route to better care by rich patients living in low to middle-income countries. In these cases, allowing patients to receive care abroad might produce an expenditure that cannot be sustained by the national health care systems (the costs of treatment of the Romanian patient Ms Petru in Germany amounted to € 17 715). In this respect, austerity and EU enlargement are striking challenges to the future of cross-border patients’ mobility.

Against this backdrop, it should also be kept in mind that the theoretical literature is also sceptical

on the beneficial effects of patients' mobility. Some recent articles show that mobility may be beneficial to patients, but it might reduce the average quality in countries that are net exporters.

The EU court ruling might question the future of patients' mobility across Europe. The principle that patients may receive treatment abroad when the quality of care in their own country is not up to international standards has been emphasized. However, an important challenge – from both a medical and a legal perspective –remains; that is the definition of the international state-of-the-art, and "undue delay", as it defines Member States' competence to determine the basket of treatments that patients can receive.

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