**Patient\_Rights**

**ID:** 46 **Code:** COM (2008) 414 2008/0142/COD **Type:** Directive

 **Date of Proposal:** 02/07/2008 **Current Status:** signed by the EP and the Council on 09/03/2011 and published in the OJ on 04/04/2011

**Memo by:** PR **Team:** DE

**Title:** Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the application of patients' rights in cross-border healthcare

**Identified Commission Official:** Androula VASSILIOU

**Media Archive score:** 43 (in 4 newspapers)

**Objective:**

Based on the case-law, the Commission initiative aimed at ensuring a clear and transparent framework for the provision of cross-border healthcare within the EU, for those occasions where the care patients seek is provided in another Member State than in their home country. When this happens, there should be no unjustified obstacles. The care should be safe and of good quality. The procedures for reimbursement of costs should be clear and transparent. The proposal addressed in particular barriers to the provision of cross-border healthcare which present risks for a high level of health protection. The Commission argued that those barriers are creating obstacles to the free movement of patients and of health services. To ensure proper working of the cross-border health protection the Commission proposed to ensure: clear information that enables people to make informed choices about their healthcare; mechanisms for ensuring the quality and safety of the healthcare that is provided; continuity of care between different treating professionals and organisations; and mechanisms to ensure appropriate remedies and compensation for harm arising from healthcare.

**Background:**

In 2003 health ministers and other stakeholders invited the Commission to explore how legal certainty in the field of cross-border care could be improved following the Court of Justice jurisprudence concerning the right of patients to benefit from medical treatment in another Member State. The first Commission’s proposal for a Directive on services in the internal market at the start of 2004 therefore included provisions codifying the rulings of the Court of Justice in applying free movement principles to health services. This approach, however, was not accepted by the European Parliament (April 2005, March 2007, May 2007) and Council (June 2006). It was felt that specificities of health services were not sufficiently taken into account, in particular their technical complexities, sensitivity for public opinion and major support from public funds. The Commission therefore developed in 2008 a policy initiative specifically targeting healthcare services as a separate issue.

**Consultation:**

Stakeholders had been extensively involved in Commission activities regarding patient mobility and health care over many years, in particular through the High Level Reflection Process, the Open Forum[[1]](#footnote-1) and the High Level Group on Health Services and Medical care.[[2]](#footnote-2)

Consultation on the specific initiative on cross-border healthcare started formally in September 2006 with the publication of a Communication[[3]](#footnote-3) inviting all relevant stakeholders to contribute to a consultation process. The Communication as well as the full summary report of the responses[[4]](#footnote-4) was published on the Commission website.[[5]](#footnote-5)

The Commission received 280 responses to this consultation from a wide range of stakeholders, including health professional organisations, health care providers, national and regional governments, insurers, the industry and individual citizens. A wide range of issues related to healthcare, and in particular to cross-border healthcare, in Europe were raised. The full list of participants available at: <http://ec.europa.eu/health/healthcare/consultations/results_open_consultation_en.htm>

**Organised Interest Activity** (no submissions available)**:**

…………..

**Issues:**

1. a need for ***more and clearer information to patients with regard to cross-border care***
2. a greater clarity over instruments to control patient flows in cross-border care and in particular over the ***conditions under which prior authorisation for cross-border care is justified and can be refused***
3. a responsibility for ***clinical oversight***
4. ***liability for harm*** and any redresses arising
5. ***reimbursement of cross-border treatment***
6. a free cross-border care as source of ***worsening of healthcare*** some MSs (in particular with regard to how to prioritise different patients and setting fair prices for cross-border care provided) ***vs.*** increased cross-border care and a ***positive effect on domestic care provision***
7. a better monitoring of health professional mobility (including ***rules on recognition of professional qualifications***)
8. a respect of the ***subsidiarity principle*** (the Article 152 of the Treaty establishing the European Community vs. EU fundamental freedoms)

**Frames:**

1. free movement of health services (common principles and clear quality and safety standards applicable to all healthcare services in order to ensure the ***freedom to provide and obtain cross border healthcare***)
2. Member States’ ***freedom to organise*** their ***health systems***
3. ***free movement of services*** (in relation to the aim of functioning Common Internal Market)

**Other Information:**

………………

1. The last Open Health Forum attracted around 380 participants from a wide range of health organisations. The Forum recommended during its conference in November 2005 that the Commission should address the potential of targeted healthcare legislation, because subsidiarity is not a sufficient guarantee of meeting the promise of universal access to high quality healthcare. The Forum also confirmed the need for strong and fully implemented safeguards of patient safety at EU level whilst respecting for the capacity of national rules guaranteeing quality and safety. The Forum also recommended to establish an internet portal for the free exchange of data, evidence and practice to foster continuous learning and innovation, Final Report of the Open Health Forum, Health challenges and future strategy, European Public Health Alliance (2005). [↑](#footnote-ref-1)
2. All EU Member States are represented in the High Level Group on Health Services and Medical Care, observers from the EEA/EFTA states as well as representatives from civil society have also been involved in the work of this group; Report on the work of the High Level Group on Health Services and Medical Care in 2006, European Commission (2006). [↑](#footnote-ref-2)
3. Commission Communication, Consultation regarding Community action on health services, SEC (2006) 1195/4, 26 September 2006. [↑](#footnote-ref-3)
4. Commission document, Summary report of the responses to the consultation regarding "Community action on health services" (2007) [↑](#footnote-ref-4)
5. <http://ec.europa.eu/health/ph_overview/co_operation/mobility/results_open_consultation_en.htm>

<http://ec.europa.eu/health/healthcare/consultations/results_open_consultation_en.htm> [↑](#footnote-ref-5)