

## 2013 NO. (26 )

### NATIONAL HEALTH SERVICE, WALES

## THE NATIONAL HEALTH SERVICE (CROSS-BORDER HEALTHCARE) (WALES) DIRECTIONS 2013

The Welsh Ministers, in exercise of the powers conferred on them by section 12(3) and 203(9) and (10) of the National Health Service (Wales) Act 2006<sup>(1)</sup> hereby give the following Directions— .

#### Application, commencement and interpretation

1.—(1) The title of these Directions is The National Health Service (Cross-Border Healthcare) (Wales) Directions 2013.

(2) These Directions apply to Local Health Boards and come into force on 25th October 2013.

(3) These Directions apply to the provision of information to and consideration of applications made by resident patients in the exercise of the rights and entitlements mentioned in Directive 2011/24/EU of the European Parliament and of the Council of 9th March 2011 on the application of patients' rights in cross-border healthcare<sup>(2)</sup>.

(4) In these Directions—

“the Cross-Border Healthcare Regulations” means the National Health Service (Cross Border Healthcare) Regulations 2013 <sup>(3)</sup>;

“the Directive” means Directive 2011/24/EU of the European Parliament and of the Council of 9<sup>th</sup> March 2011 on the application of patients' rights in cross-border healthcare ;

“Local Health Board” means a body established under section 11 of the NHS (Wales) Act;

“the NCP” means the national contact point for Wales designated by the Welsh Ministers under regulation 2 of the Cross-Border Healthcare Regulations;

“the NHS (Wales) Act” means the National Health Service (Wales) Act 2006;

“Regulation (EC) No. 883/2004” means Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems<sup>(4)</sup>;

“resident patient” means an individual for whom the United Kingdom is the member State of affiliation within the meaning of Article 3(c) of the Directive (definitions);

#### Administration

2. Each Local Health Board in the exercise of its functions under direction 3 of the National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) Directions 2010<sup>(5)</sup> must

---

(1) 2006 c. 42.

(2) O.J. No L88, 4.4.2011, p45.

(3) S.I. 2013/2269.

(4) OJ No. L 166, 30.4. 2004 p.1-123; corrigenda to the Regulation published in OJ No. L 200, 7.6.2004 p.1-49 and OJ No. L 204, 4.8. 2007, p 30.

(5) 2010 No. 40, as amended by The National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) (Amendment) Directions 2013 No. 25 (W. 25).

have regard to the matters set out in Article 9 of the Directive (administrative procedures regarding cross-border healthcare), that is to say—

- (a) procedures and criteria for reimbursement must be based on objective and non-discriminatory criteria that are necessary and proportionate;
- (b) information about administrative procedures must be publicly available and easily accessible;
- (c) each application must be dealt with objectively and impartially;
- (d) decisions on applications must be properly reasoned.

### **Consideration of applications for prior authorisation**

3.—(1) When considering an application for prior authorisation under section 6BB of the NHS (Wales) Act (prior authorisation for the purposes of section 6BA) a Local Health Board must take account of the specific medical condition, the urgency and the individual circumstances of the patient to whom the application relates<sup>(1)</sup>.

- (2) When considering an application for prior authorisation a Local Health Board must—
  - (a) consider whether the conditions for authorisation under Regulation (EC) No.883/2004 are met; and
  - (b) if the conditions are met, the Local Health Board must—
    - (i) ask the patient if the patient wishes to be granted authorisation under the Regulation (EC) No. 883/2004; and
    - (ii) unless the patient objects, grant authorisation under Regulation (EC) No. 883/2004.

### **Duty to publish information about healthcare services subject to prior authorisation**

4.—(1) For the purpose of enabling resident patients to exercise their rights and entitlements mentioned in the Directive, each Local Health Board must publish free of charge information identifying services that fall within section 6BA(6)(a) of the NHS (Wales) Act (reimbursement of the cost of services provided in another EEA state where expenditure incurred on or after 25<sup>th</sup> October 2013) as services for which prior authorisation is required in accordance with section 6BB(4)(b) of that Act (prior authorisation for the purposes of section 6BA).

(2) The information must, so far as practicable, describe the services using terms that are easily understood without specialist knowledge.

(3) The information may be provided by whatever means the Local Health Board thinks is appropriate but must be—

- (a) easily accessible;
- (b) available by electronic means;
- (c) made available in a manner that is compatible with the performance by the NCP of its functions under the Cross-Border Healthcare Regulations.

### **Duty to publish information about the range of NHS healthcare services generally available**

5.—(1) For the purpose of enabling resident patients to exercise the rights and entitlements mentioned in the Directive, each Local Health Board must publish free of charge information that enables patients to find out the range of healthcare services that are generally made available or are generally not made available (as the case may be) to patients for whom the Local Health Board is responsible for making services available under or by virtue of the NHS (Wales) Act.

---

(1) See the National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) Directions 2010 (2010 No. 40 (W.40)) as amended by the National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) (Amendment) Directions 2013 (2013 No. 25 (W.25)) which specifies the time within which a Local Health Board must determine an application.

(2) The information must include any criteria, clinical thresholds or exceptions that apply to a particular service.

(3) The information must, so far as practicable, describe the services using terms that are easily understood without specialist knowledge.

(4) The information may be provided by whatever means the Local Health Board thinks appropriate but must be—

- (a) easily accessible;
- (b) available by electronic means;
- (c) made available in a manner that is compatible with the performance by the NCP of its functions under the Cross-Border Healthcare Regulations.

### **Local Health Boards' duty to provide information and advice and assistance to patients**

6.—(1) For the purposes of complying with regulation 12 of the Cross-Border Healthcare Regulations (information on rights and entitlements) and assisting resident patients to exercise their rights and entitlements mentioned in the Directive, each Local Health Board must make publicly available information giving the contact details of the person or team at the Local Health Board to whom a resident patient may—

- (a) address a request for information; or
- (b) address a request for advice and assistance

on their rights and entitlements as mentioned in Article 5(b) of the Directive.

(2) On receipt of a request from a resident patient for information on their rights and entitlements mentioned in article 5(b) of the Directive, the Local Health Board must provide such information as it considers appropriate for the purpose of giving effect to Article 5(b) of the Directive.

(3) The Local Health Board must supply the information referred to in paragraph (2) promptly taking into account the patient's specific medical condition, the urgency and the individual circumstances and in any event no later than 10 working days from the day on which the Local Health Board received the patient's request for information.

(4) The information referred to in paragraphs (1) and (2) and the advice and assistance mentioned in paragraph (1) may be provided by whatever means the Local Health Board thinks appropriate but it must be—

- (a) easily accessible;
- (b) available by electronic means; and
- (c) made available in a manner that is compatible with the performance by the NCP of its functions under the Cross-Border Healthcare Regulations.

### **Meaning of working day**

7. In these Directions the expression "working day" means any day except a Saturday, a Sunday, Christmas day, Good Friday or a day which is a bank holiday in Wales under section 1 of the Banking and Financial Dealings Act 1971<sup>(1)</sup> and any request received on a day that is not a working day is to be treated as having been received on the next working day.

Signed by Kevin Flynn, Director of Delivery, Department of Health and Social Services under the authority of the Minister for Health and Social Services, one of the Welsh Ministers.

Date 24 October 2013

---

(1) 1971 c.80.