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CPME STATEMENT
On the Proposal for A DIRECTIVE ON THE APPLICATION OF PATIENTS' RIGHTS IN CROSS-BORDER HEALTHCARE

INTRODUCTION

CPME welcomes this proposed directive as it will clarify legal uncertainty for all actors involved. In this document we would like to comment on some particular aspects and on expected consequences of this proposal.
CPME would like to stress that this directive is the result of litigation initiated by European citizens and patients who would like to see the principles of free movement of goods and services applied to healthcare, although it is now generally recognised that healthcare has its' particularities and should stand apart from other services. These particularities have been underlined by Council in 2006 in its' "common principles in all EU health systems". This reminds all actors that this directive should be "citizen or patient driven".
Delivery of healthcare in the EU must be equitable, safe, efficient and of high quality. In cross-border healthcare this directive should implement these principles for all European citizens, although patients in general wish to be treated as close to their home as possible.
Information has become one of the cornerstones of community action and has a paramount role in the case of the present directive. Information about availability and quality of healthcare and patient rights, including financial information, should be available in an equitable way throughout Member States. CPME insists on the fact that the practical demands to meet this goal are totally underestimated and draws attention to the enormous task of making information available in an equitable and equally understandable way to all European citizens, regardless of age, gender, location, education or language.
Mutual recognition of professional qualifications, protection of personal data, e-health initiatives and frameworks, Pharma Forum Recommendations are just a few examples of other directives, platforms and activities which are closely linked to the issues addressed by the present directive and CPME calls upon all actors for a coordinated action in order to include all the concerns raised by these closely linked Commission initiatives and actions.

SPECIFIC COMMENTS

1. Cross border care volume

The current estimates on the volume of cross border care amount to approximately 1%. One of the reasons for this low figure is the lack of available information and legal certainty. As the directive aims to improve on exactly these two factors, the volume will increase, although it is clear that normal, so called everyday healthcare, will not be concerned by this except perhaps in regions with close to border activities. In any case systems and institutions alike will have to improve their cross border collaborations and exchanges.

2. Definition of healthcare

The present directive aims at legal certainty for all modes of cross-border health care. This should also include definitions of telemedicine and clear statements and calls for safe and secure ways of transmitting patient information in cross border healthcare.

3. Undue delay

This is one of the most disputed notions in healthcare as the perception of “undue” differs greatly according to past experience, cultures, systems and other subjective criteria. CPME can not and will not offer a definition of so called “acceptable delay”.

4. Prior authorisation

In the case of the possible introduction by Member States of prior authorisation for cross border hospital care, it is unclear which criteria or definitions will be used to clearly define “undermining of the financial equilibrium of social security systems”. As all social security systems are by current experience not in financial equilibrium, how would this be appreciated and by whom? This means that a prior authorisation system should only be introduced on the base of clearly evidenced and predefined criteria. In the case of isolated Member States applying prior authorisation, would this lead to discrimination? CPME expects this chapter to be discussed rather extensively in the follow-up of this directive. In this context CPME would like to stress that the jurisprudence of the “Watts” (C – 372/04) case has made a clear obligation for all systems to provide a list of numerical costs of medical services in order to determine reimbursements. Patient information about what costs are to be expected, about what is included in his coverage and about payment options should be made available in the early process of application for cross border healthcare. This would greatly facilitate the decision making process for the potential cross border patient. Information about what applies if an injury should occur is also to be highlighted as an important part of the patient’s decision making process.

5. Definition of hospital care

The current definition of hospital care, one overnight stay, is clearly unsatisfactory. The proposed list of “hospital-related” services has received a rather critical review during CPME’ s last meeting. If such a list would be created it would have to be short and updated permanently without any unnecessary bureaucracy. The difference in medical culture in the Member States would make it difficult to agree on all the items of such a list and as the inclusion of items should be based only upon scientific and quality criteria. The medical profession should be included in this decisional process.

6. Reference centres and networks

One of the most promising outcomes of this directive would be the creation of reference centres or networks. Critical mass is particularly important for the quality treatment of rare diseases and accumulated and concentrated experience of the European medical networks would increase the positive outcomes for our patients in a significant manner. Access to these reference centres should be based on the same conditions as access to the national healthcare system of the individual patient.

7. Interoperability in the e-health sector

As E-health is one of the implementation pillars of this directive, CPME would like to draw attention to the point that most of what is expected from e-health in the coming years will absorb considerable efforts in human and financial resources. Common standards on interoperability will take years to develop and progress on this field can be painstakingly slow as we have experienced on other subjects in the e-health context. CPME would also like to stress the paramount importance of a comprehensive European legal framework to ensure confidentiality and data protection. Collaboration with the working group on “article 29” should not be seen as a hindrance but rather as a chance to develop a strategy which strives to render e-health acceptable for the European citizen. A common approach involving patients and the medical profession alike is the only acceptable approach, for CPME, on this subject.

8. Unequal access

Quite a few of our national member associations are worried about the creation of a supplementary obstacle to equal access to healthcare for their patients. In some European countries the development of new social security schemes have resulted in differentiated systems implying the private and the public sector and thus creating inequalities. In the case of the combination of low reimbursement systems with the lack of medical services across the border access, this will prove to be another step towards unequal access. This and other examples will have to be explored and the results put into political analysis in order to avoid creating a two tiered system.

CONCLUSION

For the medical profession this directive is the first step in the right direction. After recognising the special characteristics of healthcare versus other services this directive will improve patient rights and provide legal certainty for the free movement of healthcare services, patients and healthcare professionals alike. This proposed directive should not be seen as a tool for patients with means or as a new way of favouring healthcare tourism but as a genuine way to improve the availability, quality, security, outcome and accessibility of European healthcare.

CPME is offering its resources to support this directive in order to achieve the above-mentioned goals in collaboration with the other stakeholders.