

Getting planned treatment elsewhere in the EU funded by the NHS: key points for Commissioners

Recent months have seen media coverage of possible new EU legislation on patients' rights to seek planned healthcare abroad, but EU law already provides certain rights in this area, and it is important that commissioners are aware of the current situation. This note gives only a very high level summary of applicable arrangements. For a more in-depth understanding, in particular, for those involved in making decisions about patient care abroad, consult the detailed guidance on the DH website:

www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/DH_073850

Three key points to note are:

- NHS patients are entitled, subject to certain conditions, to receive care in another EU country**
PCTs should have a system in place to deal with requests for treatment abroad and should always give such requests serious consideration, taking into account the individual's circumstances.
- If undue delay applies to NHS care, a PCT cannot refuse a request for treatment abroad**
The ability to provide care within a national target waiting time (e.g. 18 weeks) cannot automatically be taken to mean that the patient is not experiencing undue delay. Decisions on whether undue delay applies should be based on a clinical assessment of the individual's circumstances.
- Patients can only receive reimbursements for treatment that their PCT funds**
It is the patient's home health service that is responsible for deciding what care an individual can receive. Even if a treatment is funded elsewhere in the UK, if a patient seeks care abroad that they wouldn't have been entitled to from their PCT, they must pay for it themselves and they are not entitled to any reimbursement.

The right to request treatment abroad is not new: patients have been able to apply under the **E112 referral** process since the 1970s. The situation has, though, become more complicated recently following a European Court (ECJ) judgement (the *Watts* case) which established that NHS patients have the right to seek health services in other EU countries, with some conditions. This is sometimes called the **Article 49** route, referring to the section of the European Treaty which sets out the principle that citizens should be free to access services anywhere in Europe. Different rules apply to the two routes:

E112 referral	Article 49
Patients must always get prior authorisation before getting planned treatment abroad. There is no provision under this route for refunds of the costs of planned care received without prior authorisation.	Prior authorisation systems can be used, but can only be compulsory in certain circumstances, usually for care that requires a stay in hospital. Where prior authorisation is not compulsory, patients can ask for refunds of costs of planned treatment already received, but only for treatment that their PCT would have funded.
The NHS reimburses the treating health system for the costs of care directly.	The patient has to pay the full costs of care up front, and then seek a reimbursement from their local PCT.
The NHS meets the full cost of care, with the exception of any co-payment (which the patient would normally pay), even if this is greater than the NHS cost.	Reimbursement is limited to no more than the cost to the NHS of providing the same care. The patient pays the difference if care abroad is more expensive.
Limited to public sector providers only.	Treatment can be in either public or private sector.