GUIDELINES FOR PURCHASE OF TREATMENT ABROAD

09 November 2005

1. Introduction and scope of the Guidelines

The High Level Group on Health Services and Medical Care decided to encourage closer co-operation between authorities responsible for purchasing and provision of health care in the Member States and to develop these non-binding guidelines as a framework for the commissioners of health care to take into account when offering, purchasing or providing health care.

These guidelines cover only the situations related to relationships between commissioners of health care established or residing in different Member States involved in cross-border purchasing and provision of health care. These guidelines do not apply to purchasing of the health care by individual patients and in particular not to relationships already regulated by the applicable EU rules on coordination of social security schemes, existing arangements between Member States or existing agreements between commissioners of health care.

The detailed implementation of these guidelines may be further developed by Member States or commissioners of health care, and should take into account any applicable agreements between Member States. In any case, contracts should reflect the principles of universality, equity and solidarity.

2. Aim

These guidelines aim to assist all commissioners of health care in the Member States by setting out some key issues that commissioners of health care should take into consideration when drawing up or reviewing agreements/contracts.

3. Definitions

For the purpose of these Guidelines, the following definitions shall apply to:

Commissioners of health care: All of the entities involved in the regulation, purchasing and providing of health care (including ministries of health; national, regional, local or other public authorities; health insurance institutions; or hospitals).

Cross-border purchasing of health care: Concluding contracts concerning health care between commissioners of health care established or residing in different Member States.

Health care: Health services provided with involvement of a health professional as defined by the EU rules on the recognition of professional qualifications.

General guidelines: The general guidelines set out common elements defined in the national and EU legislation that should be reflected when determining the content of the specific guidelines.

Specific guidelines: The specific guidelines set out elements that should be included in a contract on healthcare purchasing.

4. General Guidelines

1. Applicable law. Contracts should stipulate the applicable law and jurisdiction and in particular should specify that medical care approved by the purchaser will be provided in accordance with the legal framework of the country of provision of care: however, the applicable law may not be the same for all the relevant legal issues.

2. Medical malpractice and liability. The relationship between the patient and the provider of health care should be determined according to private international law or any applicable public law. Commissioners of health care should ensure that liability insurance or other appropriate negligence coverage is in place for all health services provided under the contract.

3. Safeguard clauses. The responsibility for avoiding any conflict between the needs of domestic patients and patients from other Member States lies with the contracting parties, and should be considered before contracting.

4. Sharing of information. Commissioners of health care intend to share all information necessary, including patient information, to implement these guidelines in accordance with Directive 95/46/EC on the protection of individuals with regard the processing of personal data and on the free movement of such data. As regards health data, they may be shared where this is required for the purposes of medical diagnosis, the provision of care or treatment (including continuity of care and follow-up) or the management of health care services, and where those data are processed by a health professional who is subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy. Other data may also be shared where the data subject gives their explicit consent and the law of their Member State allows them to give such consent.

5. Price. The price of the health care should be agreed in the contract between the commissioner of health care and the provider and may differ from contract to contract for care from the provider concerned. The price should reflect the tariffs of the country of provision, where such tariffs exist, but may be varied where this is objectively justified.

   Most commissioners of health care, and the contracts they enter into, are governed by national or European public procurement rules. Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts sets rather limited

requirements to procurement of health services. The contracting authorities are, none the less, bound to comply with the fundamental rules of the EC Treaty. This implies in general, the principle of non-discrimination on the ground of nationality and more particularly for public procurement an obligation of transparency which consist in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement procedures to be reviewed.

6. Administrative procedures. Commissioners of health care should inform the relevant public authorities. All parties concerned should seek to restrict administrative procedures to what is strictly necessary.

5. Specific guidelines

Taking into account the general guidelines the contracts on the purchasing of medical care should contain provisions concerning at least the following:

(i) the types of health care covered by the contract such as number of bed days, procedures, diagnosis, treatment

(ii) the indicative number of patients, treatments or procedures covered by the contract.

(iii) the duration of the contract and mechanisms for renewal and termination of the contract.

(iv) a provision that the following types of information are exchanged between commissioners of health care and providers in the following phases:

- in the contracting phase e.g. information about infection rates, quality, clinical criteria's, description of methodology

- in the case of admission e.g. preparations, pictures, blood, location

- in the case of treatment e.g. personal and clinical data

- in the case of follow up e.g. special requirements, journey, frequency of controls, medication, time limits for exchange of medical records

- in the case of complications and possible malpractice e.g. description of cause and consequences, recommended treatment controls

- in the cases where treatment deviate from initially agreed e.g. information on clinical criteria

(v) a provision on the responsibility for provision of clear and understandable information and communication to patients in the following phases:

- admission e.g. what to bring, diagnostic results

- treatment e.g. how to prepare, what will be undertaken

- travel e.g. how to get to the provider in another Member State

- financing e.g. what the patient and purchaser are expected to pay

- follow-up and exchange of information with the patient's doctor in their Member State;

(vi) Information and definition of one responsible contact point at both sides, available for patients and commissioners of health care, and mechanisms for updating the contact point. There should be arrangements in place for clinicians on both sides to discuss the clinical arrangements under the contract.

(vii) the financial arrangements

- when the payment will take place e.g. after the treatment takes place, when the patient returns, regularly,

- what is included and how the payment is calculated e.g. length of stay, procedure, cost of capital, medication, overhead costs

- what the patient is charged e.g. medication, medical devices, meals, telephone, travel expenses, changes to planned treatment

- and arrangements for accompanying persons

(viii) the administrative arrangements

- Define a responsible party through the entire process of diagnosis, treatment, journey and follow up.

- Specify the possibilities for accompanying persons e.g. facilities, accommodation, visiting hours.

- The languages of the contract should be agreed between the commissioners of health care.

6. Review of the common guidelines

These guidelines should be kept under constant review.

7. Appendix

Examples of existing contracts and bilateral agreements are available at the following site:

http://forum.europa.eu.int/Members/irc/sanco/hsermedcare/library?l=/&vm=detailed&sb=Title

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