

# **This publication was withdrawn on 2 January 2024**

The regulations that these directions were based on have been revoked - [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(revoked\)](#) were revoked on 31 December 2020 by [The National Health Service \(Cross-Border Healthcare and Miscellaneous Amendments etc.\) \(EU Exit\) Regulations 2019](#).

# NATIONAL HEALTH SERVICE, ENGLAND

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

The Secretary of State for Health gives these Directions in exercise of the powers conferred by section 6D of the National Health Service Act 2006(a).

### Application, commencement and interpretation

1.—(1) These Directions may be cited as the National Health Service (Cross-Border Healthcare) (England) Directions 2013 and shall come into force on 25th October 2013.

(2) These Directions are given to the National Health Service Commissioning Board and every clinical commissioning group(b).

(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 (c).

(4) In these Directions—

“the Board” means the National Health Service Commissioning Board established under section 1H of the NHS Act(d) (the National Health Service Commissioning Board and its general functions);

“CCG” means a clinical commissioning group established under section 14D of the NHS Act (e)(effect of grant application);

“the Cross-Border Healthcare Regulations” means the National Health Service (Cross-Border Healthcare) Regulations 2013 (f);

“the Directive” means 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;

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

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

“Regulation (EC) No 883/2004” means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29th April 2004 on the coordination of social security systems(h);

“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. The Board in the exercise of its functions under regulation 3 of the National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013 (exercise of

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(a) 2006 c. 41. Section 6D was inserted by the Health and Social Care Act 2012 (c.7), section 19.

(b) The Directions apply to England only by virtue of section 271(1) of the National Health Service Act 2006.

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

(d) Section 1H was inserted by the Health and Social Care Act 2012, section 9(1).

(e) Section 14D was inserted by the Health and Social Care Act 2012, section 25(1).

(f) S.I. 2013/2269.

(g) 2006 c.42.

(h) 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.

functions)(a) must 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; and
- (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 Act (prior authorisation for the purposes of section 6BA) the Board must take account of the specific medical condition, the urgency and the individual circumstances of the patient to whom the application relates(b).

(2) When considering an application for prior authorisation the 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 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, the Board must publish free of charge information identifying services that fall within section 6 BA(6)(a) of the NHS Act (reimbursement of the cost of services provided in another EEA state where expenditure incurred on or after 25th 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 Board thinks is appropriate but 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.

### **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, the Board and each CCG 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 Board or the CCG is responsible for making services available under or by virtue of the NHS Act.

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(a) S.I.2013/261.

(b) See the National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013 (S.I. 2013/261) which specifies the time within which the 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 Board or the CCG thinks appropriate but 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.

### **CCG duty to provide information to patients**

6.—(1) For the purpose of complying with regulation 9 of the Cross-Border Healthcare Regulations (information on rights and entitlements) each CCG must make publicly available information giving the contact details of the person or team at the CCG to whom a resident patient may address a request for information 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 CCG must provide such information as it considers appropriate for the purpose of giving effect to Article 5(b) of the Directive.

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

(4) The information referred to in paragraphs (1) and (2) may be provided by whatever means the CCG 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.

### **The Board's duty to provide advice and assistance**

7.—(1) For the purpose of complying with regulation 9 of the Cross-Border Healthcare Regulations (information on rights and entitlements) and assisting resident patients to exercise their rights and entitlements under the Directive the Board must—

- (a) establish a service for the purpose of providing information, advice and assistance to resident patients on their rights and entitlements under the Directive; and
- (b) make publicly available information giving the contact details of that service.

(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 Board must provide such information as it considers appropriate for the purpose of giving effect to Article 5(b) of the Directive.

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

(4)The information, advice and assistance referred to in paragraphs (1) and (2) may be provided by whatever means the 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”**

**8.** 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 England under section 1 of the Banking and Financial Dealings Act 1971<sup>(a)</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 authority of the Secretary of State for Health

25 October 2013

Nick Tomlinson  
Member of the Senior Civil Service  
Department of Health

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<sup>(a)</sup> 1971 c.80.