
STATUTORY RULES OF NORTHERN IRELAND

2013 No. 299

**The Health Services (Cross-Border Health
Care) Regulations (Northern Ireland) 2013**

PART 3

TREATMENT IN ANOTHER MEMBER STATE

Reimbursement of the cost of health care services

8.—(1) In Article 14B of the Order of 1972 (reimbursement of the cost of health care services secured in another EEA state)(1),—

(a) in the title, at the end, add “where expenditure was incurred on or after 10th May 2012 but before 27th December 2013”.

(b) after paragraph (1) insert—

“(1A) But the duty in paragraph (1) does not apply where Article 14D applies (qualifying EEA expenditure incurred on or after 27th December 2013).”.

(2) After Article 14C of that Order (prior authorisation for the purposes of Article 14B(3)(b) or (c))(2), insert—

**“Reimbursement of the cost of health services secured in another EEA state where
expenditure occurred on or after 27th December 2013**

14D.—(1) This Article applies where qualifying EEA expenditure is incurred by or on behalf of an eligible person on or after 27th December 2013 (but see paragraphs (9) and (14)).

(2) The Department must, on an application being made by or on behalf of an eligible person, reimburse the amount of the qualifying EEA expenditure incurred by or on behalf of the person.

(3) The duty under paragraph (2) is subject to—

- (a) the exceptions in paragraphs (8) and (9);
- (b) any limit applicable under paragraph (11);
- (c) any deduction applicable under paragraph (12).

(4) For the purpose of this Article, “qualifying EEA expenditure” is expenditure incurred on the provision, by an authorised provider, in an EEA state other than the United Kingdom, of a service as respects which Condition A or B is met.

(1) Article 14B (Reimbursement of the cost of health care services secured in another EEA state) was inserted into the Order of 1972 by regulation 4(2) of The Health Care (Reimbursement of the Cost of EEA Services etc.) Regulations (Northern Ireland) 2012 ([S.R. 2012 No. 167](#))

(2) Article 14C (Prior authorisation for the purpose of Article 14B(3)(b) or (c)) was inserted into the Order of 1972 by regulation 4(2) of The Health Care (Reimbursement of the Cost of EEA Services etc.) Regulations (Northern Ireland) 2012 ([S.R. 2012 No. 167](#))

(5) Condition A is that—

- (a) the service was necessary to treat or diagnose a medical condition of the eligible person;
- (b) the service is the same as or equivalent to a service that the Department would make or have made available to the eligible person under this Order or the 2009 Act in the circumstances of the person's case; and
- (c) where it falls within paragraph (6), the Department had given authorisation under Article 14E(4)(a) for the provision of the service to the eligible person before the service was provided.

(6) A service falls within this paragraph if—

- (a) it is subject to planning requirements relating to the objective of ensuring sufficient and permanent access to a balanced range of high quality treatment, or to the wish to control costs and avoid (as far as possible) any waste of financial, technical and human resources, and—
 - (i) it involves a stay in hospital accommodation for at least one night; or
 - (ii) it requires the use of highly specialised and cost-intensive medical infrastructure or medical equipment;
- (b) it involves treatments presenting a particular risk for the eligible person or the population; or
- (c) it is provided by a health care provider that, on a case-by-case basis, could give rise to serious and specific concerns relating to the quality or safety of the care, with the exception of a service which is subject to European Union legislation ensuring a minimum level of safety and quality throughout the European Union.

(7) Condition B is that, before the service was provided, the Department had given authorisation under Article 14E(4)(b) for its provision to the eligible person.

(8) The duty in paragraph (2) does not apply where the qualifying EEA expenditure was incurred in connection with an arrangement which was entered into by or on behalf of the eligible person in the course of business and under which the applicant for reimbursement has gained or might be expected to gain any financial benefit.

(9) This Article does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No 883/2004 applies.

(10) Paragraphs (11) and (12) apply where the service is the same as or equivalent to a service that the Department would have made available to the eligible person under this Order or the 2009 Act in the circumstances of the person's case.

(11) The Department may limit the amount of any reimbursement under this Article to the cost that it would have incurred if the same or an equivalent service had been made available by it.

(12) The Department may deduct from the amount of any reimbursement under paragraph (2) the amount of any health care charge which would have been payable for the same service or an equivalent service if the service had been available by the Department; and in determining for this purpose the amount of any health care charge regard shall be had to any entitlement the eligible person would have had—

- (a) to any payment or contribution by virtue of regulations made under paragraph 2A(1) or (4) of Schedule 15; or
- (b) to any remission or repayment by virtue of regulations made under paragraphs 1(b) and 1B of that Schedule.

(13) The Department may determine—

- (a) the form in which an application under this Article must be made; and
- (b) the information to be provided in support of the application.

(14) This Article does not apply where expenditure is incurred in Iceland, Liechtenstein or Norway before Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare applies to those States in accordance with the EEA agreement.

(15) In this Article and Article 14E, "authorised provider", "eligible person", "health care charge" and "service" each have the meaning given in Article 14B.

Prior authorisation for the purposes of Article 14D(5)(c) and (7)

14E.—(1) A person may apply to the Department under this Article for prior authorisation for the purposes of Article 14D(or (7) in relation to the provision of a service ("the requested service") to an eligible person.

(2) The requested service must be—

- (a) a service as respects which Condition A, mentioned in paragraph (5) of Article 14D, is satisfied and which falls within paragraph (6) of that Article; or
- (b) a service that is neither the same as nor equivalent to a service that the Department would make available to the eligible person under this Order or the 2009 Act in the circumstances of the person's case.

(3) The Department may determine—

- (a) the form in which an application under this Article must be made; and
- (b) the information to be provided in support of this application.

(4) The Department—

- (a) must authorise the provision of the requested service if it is a service mentioned in paragraph (2)(a) (but see paragraph (5)); and
- (b) may authorise the provision of the requested service in any case where—
 - (i) the requested service is necessary to treat or diagnose a medical condition of the eligible person; and
 - (ii) the duty in paragraph (a) does not apply.

(5) The duty in paragraph (4)(a) does not apply if at least one of the following conditions is met—

- (a) the eligible person will, according to a clinical evaluation, be exposed with reasonable certainty to a patient-safety risk that cannot be regarded as acceptable, taking into account the potential benefit for the person of the requested service;
- (b) the general public will be exposed with reasonable certainty to a substantial safety hazard as a result of the requested service;
- (c) the requested service is to be provided by a health care provider that raises serious and specific concerns relating to the respect of standards and guidelines on quality of care and patient safety, including provisions on supervision, whether these standards and guidelines are laid down by laws or regulations or through accreditation systems established by the member State in which the service will be provided;
- (d) the Department can provide to the eligible person a service that is the same as or equivalent to the requested service within a period of time that is medically justifiable, taking into account the patient's state of health at the time the decision under paragraph (4)(a) is made and the probable course of the medical condition to which the service relates.

(6) The matters to which the Department is to have regard in determining for the purpose of paragraph (5)(d) whether the length of any delay is medically justifiable include—

- (a) the eligible person's medical history;
 - (b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the service is to relate;
 - (c) whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the eligible person to carry out ordinary daily tasks; and
 - (d) the extent to which the provision of the service would be likely to alleviate, or to enable the alleviation of the pain, disability, discomfort or suffering.
- (7) Any authorisation under paragraph (4) must be in writing.”.

Payment of travelling expenses

9. In Article 45 (travelling expenses of patients, etc) of the Order of 1972⁽³⁾, in paragraph (1)(a) (ii), after the words “Article 14B”, insert “or 14D”.

Information on rights and entitlements

10.—(1) The Board must ensure that information on the rights and entitlements mentioned in Article 5(b) of the Directive is provided to resident patients for whom the Board is responsible for making services available under the Order of 1972 or the 2009 Act.

(2) The information referred to in paragraph (1) must be made available in a manner that is compatible with the performance by the NCP of its functions under regulation 5.

⁽³⁾ Article 45 (Travelling expenses of patients, etc) was amended by regulation 5 of The Health Care (Reimbursement of the Cost of EEA Services etc.) Regulations (Northern Ireland) 2012 ([S.R. 2012 No. 167](#))