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STATUTORY INSTRUMENTS

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**2010 No. 915**

**The National Health Service (Reimbursement of  
the Cost of EEA Treatment) Regulations 2010**

**PART 3**

**AMENDMENTS TO THE NATIONAL HEALTH SERVICE (WALES) ACT 2006**

**Reimbursement of the costs of treatment in another EEA state (Wales)**

**5.** After section 6 of the NHS (Wales) Act, insert—

**“Reimbursement of cost of services provided in another EEA state**

**6A.**—(1) The Welsh Ministers must, on an application made by any person, reimburse to that person the amount of any qualifying EEA expenditure incurred by that person on or after 23 August 2010, but this is subject to subsections (5) and (6), to any limit applicable under subsection (8) and to any deduction applicable under subsection (9).

(2) For the purpose of this section, “qualifying EEA expenditure” is expenditure incurred on the provision by an authorised provider, in an EEA state other than the United Kingdom, to a person ordinarily resident in Wales (“the patient”) of a service as respects which condition A or condition B is met.

(3) Condition A is that the service—

- (a) was necessary to treat or diagnose a medical condition of the patient,
- (b) is the same as or equivalent to a service that the Welsh Ministers or the Local Health Board in whose area the patient usually resides would make or have made available to the patient under this Act in the circumstances of the patient’s case, and
- (c) is not a special service.

(4) Condition B is that before the service was provided the Welsh Ministers had given authorisation under section 6B for the provision of the service to the patient.

(5) The duty in subsection (1) does not apply where the applicant incurred the qualifying expenditure in connection with an arrangement which was entered into by the applicant in the course of business and under which the applicant has gained or might be expected to gain any financial benefit.

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

(7) Subsections (8) and (9) apply where the service is the same as or equivalent to a service that the Welsh Ministers or the Local Health Board in whose area the patient usually resides would have made available to the patient under this Act in the circumstances of the patient’s case.

(8) The Welsh Ministers may limit the amount of any reimbursement under this section—

- (a) in relation to a service other than a dental service, to the cost that the Welsh Ministers or the Local Health Board would have incurred if the same or an equivalent service had been made available by either of them, and
  - (b) in relation to a dental service, to the average cost that the Welsh Ministers or the Local Health Board would have incurred if the same or an equivalent service had been made available by either of them.
- (9) The Welsh Ministers may deduct from any reimbursement under this section the amount of any NHS charge which would have been payable for the same service or an equivalent service if the service had been made available by the Welsh Ministers or the Local Health Board; and in determining for this purpose the amount of any NHS charge regard shall be had to any entitlement the patient would have had—
- (a) to any payment or contribution by virtue of regulations made under section 129(1) or (3), or
  - (b) to any remission or repayment by virtue of regulations made under section 130.
- (10) The Welsh Ministers may determine—
- (a) the form in which an application under this section must be made, and
  - (b) the information to be provided in support of the application.
- (11) In this section and section 6B—
- “authorised provider”, in relation to any service provided in an EEA state other than the United Kingdom, means a person who is lawfully providing that service;
- “NHS charge” means a charge payable under regulations made under section 121(1), 125(1) or 128(1);
- “special service” means—
- (a) a service that involves a stay in hospital accommodation for at least one night,
  - (b) medical treatment that involves general anaesthesia, epidural anaesthesia or intravenously administered sedation,
  - (c) dental treatment that involves general anaesthesia or intravenously administered sedation, or
  - (d) a service whose provision involves the use of specialised or cost-intensive medical infrastructure or medical equipment;
- “service” includes any goods, including drugs, medicines and appliances, which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.

### **Prior authorisation for the purposes of section 6A**

**6B.**—(1) A person may apply to the Welsh Ministers under this section for prior authorisation for the purposes of section 6A in relation to the provision of a service (“the requested service”) to a person ordinarily resident in Wales (“the patient”).

- (2) The requested service must be—
  - (a) a special service, or
  - (b) a service that is neither the same as nor equivalent to a service that the Welsh Ministers or the Local Health Board in whose area the patient usually resides would make available to the patient under this Act in the circumstances of the patient’s case.
- (3) The Welsh Ministers may determine—

- (a) the form in which an application under this section must be made, and
  - (b) the information to be provided in support of the application.
- (4) The Welsh Ministers—
- (a) must authorise the provision of the requested service if it is a special service and the conditions in subsection (5) are met, and
  - (b) may authorise the provision of the requested service in any other case where the requested service is necessary to treat or diagnose a medical condition of the patient.
- (5) The conditions referred to in subsection (4)(a) are—
- (a) that the requested service is necessary to treat or diagnose a medical condition of the patient,
  - (b) that the requested service is the same as or equivalent to a service that the Welsh Ministers or the Local Health Board in whose area the patient usually resides would make available to the patient in the circumstances of the patient's case, and
  - (c) that the Welsh Ministers or the Local Health Board cannot provide to the patient a service that is the same as or equivalent to the requested service within a period of time that is acceptable on the basis of medical evidence as to the patient's clinical needs, taking into account the patient's state of health at the time the decision under this section is made and the probable course of the medical condition to which the service relates.
- (6) The matters to which the Welsh Ministers are to have regard in determining for the purpose of subsection (5)(c) whether the length of any delay is acceptable include—
- (a) the patient'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 patient to carry out ordinary daily tasks, and
  - (d) the extent to which the provision of the service would be likely to alleviate, or enable the alleviation of, the pain, disability, discomfort or suffering.
- (7) Any authorisation under this section must be in writing.”.

### **Payment of travelling expenses**

6. In section 131 (payment of travelling expenses) of the NHS (Wales) Act, for paragraph (a) substitute—

- “(a) for the payment by the Welsh Ministers, a Local Health Board or an NHS trust, in such cases as may be prescribed, of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their obtaining—
- (i) any services provided under this Act,
  - (ii) any services in respect of which the costs are reimbursable under section 6A, or
  - (iii) any services authorised to be received in another EEA state or Switzerland under Article 20 or Article 27(3) of Regulation (EC) No. 883/2004,”.

## Interpretation

7. In section 206(1) (interpretation) of the NHS (Wales) Act, after the definition of “registered pharmacist” insert the following definition—

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