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DECISION No S12

of 16 October 2024

concerning the reimbursement of healthcare in connection to patients' transfer to another Member State in case of mass casualties following disasters

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(C/2025/1598)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72 (a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ([1]), under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ([2]),

Having regard to Articles 20 and 27(3) of Regulation (EC) No 883/2004 concerning travel with the purpose of receiving benefits in kind,

Having regard to Article 26 of Regulation (EC) No 987/2009,

Whereas:

(1) When a mass disaster occurred in a Member State (such as for example major fires, chemical/nuclear accidents, or pandemics), which resulted in a transfer of patients to another Member State, it has not always been clear which Member State was responsible to bear the costs of healthcare and under which legal basis.

(2) Practical difficulties may result from the fact that more than two Member States can be involved in case of a mass casualty disaster, which calls for a uniform legal approach on this matter.

(3) Pursuant to the case-law of the Court of Justice of the European Union (particularly, in its *Elchinov* judgment of 5 October 2010 ([3])), the requirement for prior authorisation cannot prevent the right to reimbursement in respect of hospital treatment when other conditions in the competent Member State are met. The transfer of insured persons to a Member State other than the competent Member State, in order to receive vitally urgent healthcare following a mass casualty disaster, should therefore be interpreted as falling within the scope of Article 20 of Regulation (EC) No 883/2004.

(4) If the Member State where a mass casualty disaster occurred does not have the capacity to provide the vitally urgent healthcare to the injured/sick persons, the need to transfer them to another Member State demonstrates that the healthcare concerned could not be given within a time-limit which is medically justifiable, as required by Article 20 of Regulation (EC) No 883/2004.

(5) In the specific circumstances of mass casualty disasters, it is often very complicated to comply with the temporality provided for in Article 20 of Regulation (EC) No 883/2004 and to ask for a prior authorisation to receive healthcare in another Member State.

(6) The decision to transfer patients to another Member State following a mass casualty disaster is the result of a medical assessment, made by a healthcare provider in the Member State where the disaster occurred. Since an attempt to give an exhaustive overview of what could constitute a mass casualty disaster would be very complicated, a case-by-case approach should be favoured in this regard.

([1]) OJ L 166, 30.4.2004, p. 1.
([2]) OJ L 284, 30.10.2009, p. 1.
([3]) Case C-173/09, *Elchinov*, judgement of 5 October 2010.

(7) In the specific circumstances of mass casualty disasters, the transport to, and from, the Member State of treatment (where the patient was transferred because vitally urgent healthcare was not available "within a time-limit which is medically justifiable"), is inherent to the treatment itself. The competent Member State, even if it does not provide for the reimbursement of the costs of travel and stay, may exceptionally decide to cover such costs.

(8) In case of transport of patients to another Member State in the event of a mass casualty disaster, the Emergency Response Coordination Centre (ERCC) provides a 24/7 service that can coordinate and co-finance the necessary medical transport. When Member States decide to request such assistance, the ERCC will activate the European Union Civil Protection Mechanism in accordance with its standard procedures ([4]).

(9) Guidelines on the follow-up and/or continuation of the treatment after the patients are transferred back home, in the Member State of residence or in the competent Member State (e.g., exchange of medical reports, recognition of prescriptions, etc) could facilitate the handling of such cases between all Member States involved.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HAS DECIDED AS FOLLOWS:

1. This Decision lays down the rules for the reimbursement of healthcare in case of patients' transfer to another Member State in case of mass casualties following disasters.

2. The benefits in kind provided to injured/sick persons insured in a Member State and transferred to a Member State other than the competent Member State or the Member State of residence (where s/he is registered with a document S1 or SED S072), following a mass casualty disaster, fall under Articles 20 and 27(3) of Regulation (EC) No 883/2004.

3. In the event of a mass casualty disaster, the competent Member State shall issue an S2 authorisation *a posteriori* pursuant to Article 20 of Regulation (EC) No 883/2004, so that the costs of the benefits in kind delivered in the Member State of treatment (where the patient is transferred, but not insured or registered with a document S1 or SED S072) are covered by the competent Member State.

4. If a mass casualty disaster occurred in the Member State of residence (where the patient is registered with a document S1 or SED S072) and the patient is transferred to a Member State other than the competent Member State, the Member State of residence shall issue an S2 authorisation *a posteriori* pursuant to Article 26(3) of Regulation (EC) No 987/2009, so that the costs of the benefits in kind delivered in the Member State of treatment (where the patient is transferred, but not insured or registered with a document S1 or SED S072) are covered by the competent Member State, taking into account Articles 20(4) and 27(5) of Regulation (EC) No 883/2004.

5. An S2 authorisation issued *a posteriori* in accordance with paragraphs 3 or 4 shall contain a clear indication that it relates to vitally urgent healthcare for a patient transferred to another Member State in connection with a mass casualty disaster.

6. The Member States shall favour a case-by-case assessment while deciding whether a case constitutes a mass casualty disaster or not.

A non-exhaustive list of the situations which can be considered as a "mass casualty disaster" is given in the Annex hereto.

([4]) https://civil-protection-humanitarian-aid.ec.europa.eu/what/civil-protection/eu-civil-protection-mechanism_en.

7. Pursuant to Article 26(8) of Regulation (EC) No 987/2009, where the national legislation of the competent Member State provides for the reimbursement of the costs of travel and stay which are inseparable from the treatment of the insured person, the costs of transport to, and from, the Member State of treatment (including from the Member State of treatment to the Member State of residence), in case of patients' transfer following a mass casualty disaster, shall be borne by the competent Member State that issued the document S2 (or on whose behalf the document S2 was issued by the Member State of residence further to Article 26(3) of Regulation (EC) No 987/2009).

   The competent Member State may – given the exceptional circumstances – nevertheless decide to reimburse the transport costs, and other related costs, even if this is not provided for by its national legislation.

8. This Decision is without prejudice to the bilateral agreements between Member States on cross-border healthcare.

9. This Decision shall be published in the Official Journal of the European Union. It shall apply from the first day of the second month after its publication.

The Chair of the Administrative Commission
Vera Judit ÁCS

ANNEX

Non-exhaustive examples of mass casualty disasters:

— major fire

— major (air, road or maritime) transport accident

— chemical accident

— nuclear accident

— pandemic

— earthquake

— flooding

— bombing

— avalanches