Case handler: Per-Arvid Sjøgård
Tel: +32 2 286 18 57
e-mail: psj@eftasurv.int

Brussels, 30 September 2020
Case No: 85598
Document No: 1152080

Norwegian Ministry of Health and Care Services
Postboks 8011 Dep
0030 Oslo
Norway

Dear Sir/Madam,

Subject: Reimbursement of costs related to cross-border healthcare

The EFTA Surveillance Authority ("the Authority") has received a complaint concerning the Norwegian legislation and administrative practices on the reimbursement of costs related to cross-border healthcare. The Authority has also previously dealt with similar issues in the context of case 80137, which was discussed during the package meeting in 2017 and subsequently closed. In addition, several enquiries have been received by the Authority's Internal Market Affairs Directorate pertaining to these issues.

Directive 2011/24 on patients' rights (the "Directive")[1] provides an extensive legal framework for cross-border healthcare, including provisions on the reimbursement of costs, administrative responsibilities of the EEA States and cooperation among national authorities. It aims at promoting patient mobility throughout the EEA, whereby patients may receive medical care in another EEA State than the one in which they are socially insured.

Article 7 of the Directive provides the general principles for reimbursement of costs related to cross-border healthcare. It requires that the costs incurred are reimbursed insofar as the healthcare in question is *"among the benefits to which the insured person is entitled to in the Member State of affiliation"*. Notably, Article 7(4) stipulates that such costs shall be reimbursed *"up to the level of costs that would have been assumed by the Member State of affiliation, had this healthcare been provided in its territory without exceeding the actual costs of healthcare received."*

Moreover, Article 7(6) obliges the EEA States to have in place *"a transparent mechanism for calculation of costs of cross-border healthcare that are to be reimbursed."* That mechanism must be based on *"objective, non-discriminatory criteria known in advance (…)"* Pursuant to Article 9(1), those national criteria must be necessary and proportionate to the objective to be achieved.

In accordance with Article 7(9), c.f. Article 7(11), national authorities may limit the application of the Directive's rules on reimbursement if that decision is based on overriding reasons of general interest and is limited to what is necessary and proportionate. Such a decision must be notified to the Authority pursuant to the provision as adapted to the EEA Agreement, in particular Protocol 1 thereto.

The National Insurance Act[2] Section 5-24a appears to form, together with the relevant implementing regulation[3] the legal basis under Norwegian law for the reimbursement of

[1] Directive 2011/24 on the application of patients' rights in cross-border healthcare, which entered into force in the EEA on 01.08.2015.
[2] LOV-1997-02-28-Lov om folketrygd (*folketrygdloven*).
[3] FOR-2010-11-22-1466 Forskrift om stønad til helsetjenester mottatt i et annet EØS-land.

costs related to cross-border healthcare. The administrative circular sets out the administration's interpretation of those provisions.[4]

As regards the level of costs to be reimbursed, the circular provides *inter alia* that only 80% of what is referred to as the "DRG price" can actually be reimbursed, given that the estimate of a "DRG cost" does not only include the actual treatment costs, but also costs unrelated to the treatment, such as administration, services, research, education etc. Similarly, it is stated that the "DRG cost" is calculated based on the diagnosis, the procedures (surgeries etc.), age, sex, and status at the end of the inpatient medical treatment.[5] Furthermore, other provisions of national law and administrative practices could potentially impede the effectiveness of the principle of patient mobility, as safeguarded by the Directive (see questions 3-6 below).

In order for the Authority to examine and assess the complaint, the Norwegian Government is invited to provide the following information:

1. How is the DRG cost calculated?
2. Why is there a 20% deduction made for costs assumed unrelated to the actual medical treatment in question?
3. What is the deadline for submitting claims for reimbursement of costs related to cross-border healthcare? Please refer to relevant legislation and administrative practices.
4. How is the provision in the implementing regulation Section 11(5) on translation of necessary documents applied in practice? Please provide a detailed explanation of, *inter alia*, which documents are considered "necessary" and in which cases the requirement would be waived.
5. With reference to Article 7(1) of the Directive, how is the criteria "equivalent healthcare" (*tilsvarende helsehjelp*) in Section 7(1) of the implementing regulation applied in practice? Please provide a detailed explanation of what elements are taken into consideration when deciding whether that criteria is fulfilled.
6. With reference to *inter alia* Articles 7(6) and 9(1) of the Directive, how does the national reimbursement process ensure transparency and predictability?

The Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by *30 October 2020*. Please enclose copies of any relevant national legislation, including English translations if available.

Yours faithfully,

Kristin Saether Bangsund
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Kristin Saether Bangsund.

[4] Rundskriv til forskrift om stønad til helsetjenester mottatt i et annet EØS-land (F22.11.2010 nr 1466).
[5] The issue was also the subject of correspondence between the Norwegian Government and the Authority in case 80137, which has since been closed.