



RESPONSE TO

**DEPARTMENT OF HEALTH
CONSULTATION ON**

**EUROPEAN COMMISSION PROPOSALS FOR
DIRECTIVE ON PATIENTS' RIGHTS IN CROSS-
BORDER HEALTHCARE**

December 2008

1 Introduction

AvMA (Action against Medical Accidents) is the independent UK charity which promotes patient safety and justice for people affected by medical accidents (or 'patient safety incidents'). AvMA's views are informed by its 25 years' experience of supporting patients/families affected by medical accidents and engagement with NHS and private healthcare providers, regulators and policy makers. AvMA welcomes the proposed directive on patients' rights in the context of cross-border healthcare. We have limited our response to areas in which we have relevant experience/expertise and are within our interests of patient safety and justice. We have done this in response to the relevant consultation question themes in the Department of Health consultation document.

2 Response to Consultation Questions

(i) Common principles in all EU health systems

We believe that the Commission should require Member States to

- have in place adequate systems to investigate incidents in healthcare which may have caused harm and provide access to redress
- publish consistent information across Member States on the risks associated in healthcare treatments, and
- demonstrate that standards applied to healthcare quality and safety in each member state, including the training and regulation of health professionals, meets a commonly agreed standard, or if it does not, to demonstrate how these differ and an action plan to bring them up to the appropriate level.

(ii) Use of healthcare in another Member State

We believe that the clinical grounds on which commissioners should be able to refuse to authorise NHS patients going to another Member State for treatment and being reimbursed are if the treatment is assessed as being of no potential benefit or is considered to be more harmful than the potential benefit.

If there is a prior authorisation system, the timescale for this process must be very rapid to avoid patients' safety being put at risk due to administrative delay.

Patients should have a right of appeal against a decision not to authorise treatment in another Member State.

We believe that national contact points should either be at a central UK level, or one for each of the countries of the UK. Consideration should be given to using independent sector organisations to act as contact point(s) under contract to the department(s) of health. Given the nature of advice to be provided, it is important that the provider of such advice is seen to be independent of the state.

We note (paragraph 32) that one of the roles of the national contact points will be to helping people to seek appropriate redress in the event of harm from cross-border treatment. We support this but suggest that different roles of the actual contact centres might best be provided by different organisations working together as a

collaborative/partnership. For example, in the UK it might be appropriate for an existing agency such as AvMA to provide this help whilst the general information on rights, reimbursement etc might be provided by another agency.

We note (paragraph 33) that it is anticipated that there should be an “out of court settlement scheme” for patients who have experienced harm as a result of treatment in another Member State. We welcome this in principle but suggest that detailed consultation is needed on the nature of any such scheme. Guiding principles should be that any such scheme should

- seek as best as possible to restore the person affected to the position they would have been in ‘but for’ the incident
- ensure that people who may benefit from such a scheme are empowered by access to specialist legal advice
- ensure that decisions made by the scheme are independent of the healthcare provider concerned
- ensure that patient safety lessons as a result of the incident are acted upon
- not compromise citizens rights to seek redress through the courts.

3 Other questions on the impact of the draft Directive

We believe that in order to achieve an equitable approach to UK citizens it will be necessary for the NHS to negotiate arrangements with other member states so that patients seeking access abroad are not prevented from doing so by the need to pay ‘up front’.