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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 2**

**AMENDMENTS TO THE NATIONAL HEALTH SERVICE ACT 2006**

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

2. After section 6 of the NHS Act, insert—

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

**6A.**—(1) The Secretary of State 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 England (“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 Secretary of State or a responsible authority 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 Secretary of State 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 Secretary of State or a responsible authority would have made available to the patient under this Act in the circumstances of the patient’s case.

(8) The Secretary of State 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 Secretary of State or a responsible authority 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 Secretary of State or a responsible authority would have incurred if the same or an equivalent service had been made available by either of them.

(9) The Secretary of State 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 Secretary of State or a responsible authority; 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 180(1) or (3), or
- (b) to any remission or repayment by virtue of regulations made under section 182.

(10) The Secretary of State 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 172(1), 176(1) or 179(1);

“responsible authority” means, in relation to a patient, a Strategic Health Authority or Primary Care Trust responsible under or by virtue of this Act for providing or securing the provision of services for the benefit of the patient;

“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 Secretary of State 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 England (“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 Secretary of State or a responsible authority would make available to the patient under this Act in the circumstances of the patient's case.
- (3) The Secretary of State 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 Secretary of State—
  - (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 Secretary of State or a responsible authority would make available to the patient in the circumstances of the patient's case, and
  - (c) that the Secretary or State or a responsible authority 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 Secretary of State is 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.”.