

**2012 No. 167**

**HEALTH AND PERSONAL SOCIAL SERVICES**

**The Health Care (Reimbursement of the Cost of EEA Services  
etc.) Regulations (Northern Ireland) 2012**

*Made* - - - - *18th April 2012*

*Coming into operation* - *10th May 2012*

The Department of Health, Social Services and Public Safety(a), makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(b).

The Department of Health, Social Services and Public Safety is a Department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to cross-border healthcare(c).

**Citation and commencement**

1. These Regulations may be cited as the Health Care (Reimbursement of the Cost of EEA Services etc.) Regulations (Northern Ireland) 2012 and shall come into operation on 10th May 2012.

**Interpretation**

2.—(1) In these Regulations—

“the Order of 1972” means the Health and Personal Social Services (Northern Ireland) Order 1972(d);

“the 2009 Act” means the Health and Social Care (Reform) Act (Northern Ireland) 2009(e).

(2) The Interpretation Act (Northern Ireland) 1954(f) shall apply to these Regulations as it applies to an Act of the Assembly.

**Provision of health care outside Northern Ireland**

3.—(1) After section 3 of the 2009 Act, insert—

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- (a) Formerly the Department of Health and Social Services; See S.I. 1999/283 (N.I. 1) Article 3(6)  
(b) 1972 c.68. By virtue of the amendment to section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the EEA Agreement. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and by the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part 1 of the Schedule  
(c) S.I. 2009/2743  
(d) S.I. 1972/1265 (N.I. 14)  
(e) 2009 c.1 (N.I.)  
(f) 1954 c.33 (N.I.)

### **“Provision of health care outside Northern Ireland**

**3A.** The Department may provide or secure the provision of health care mentioned in Article 5(1), 6(1), 7(1), 8(1) or 10(1) of the Order of 1972 (hospital etc. accommodation and health care services, including diagnostic services, after-care and ancillary services) outside Northern Ireland.”

(2) In section 8(6) of that Act (functions of the Regional Board), after “3” insert “or its power under section 3A”.

### **Reimbursement of the cost of health care services secured in another EEA state**

**4.—(1)** In Article 2(2) of the Order of 1972 (interpretation), at the appropriate place, insert the following definitions—

““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;

“EEA state”, in relation to any time, means—

- (a) a state which at that time is a member State; or
- (b) any other state which at that time is a party to the EEA agreement;

“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(a);”.

(2) After Article 14A of that Order, insert—

### **“Reimbursement of the cost of health care services secured in another EEA state**

**14B.—(1)** The Department must, on an application being made by or on behalf of an eligible person, reimburse the amount of any qualifying EEA expenditure incurred by or on behalf of the person, on or after 10th May 2012.

(2) The duty under paragraph (1) is subject to—

- (a) the exceptions in paragraphs (4) and (5);
- (b) any limit applicable under paragraph (7);
- (c) any restriction applicable under paragraph (8); and
- (d) any deduction applicable under paragraph (9).

(3) For the purpose of this Article, “qualifying EEA expenditure” is expenditure incurred on the provision, by an authorised provider in an EEA state other than the United Kingdom, of a service which is necessary to treat or diagnose a medical condition of the eligible person and is also—

- (a) a service—
  - (i) which is the same as or equivalent to health care that the Department would make or have made available to the eligible person under this Order or the 2009 Act in the circumstances of the person’s case; and
  - (ii) which is not a special service;
- (b) a special service for which the Department has given prior authorisation under Article 14C; or
- (c) a service—
  - (i) which is neither the same as nor equivalent to health care that the Department would so make or have made available to the eligible person;

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(a) OJ L166, 30.4.2004, p.1

- (ii) which is not a special service; and
- (iii) for which the Department has given prior authorisation under that Article.

(4) The duty under paragraph (1) does not apply where the qualifying EEA expenditure was incurred in connection with an arrangement which was entered into by or on behalf of the eligible person in the course of business and under which the applicant for reimbursement has gained or might be expected to gain any financial benefit.

(5) This Article does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No. 883/2004 applies<sup>(a)</sup>.

(6) Paragraphs (7), (8) and (9) apply where the service is the same as or equivalent to health care that the Department would have made available to the eligible person under this Order or the 2009 Act in the circumstances of the person's case.

(7) The Department may limit the amount of any reimbursement under paragraph (1)—

- (a) as respects health care other than a dental service, to the cost that the Department would have incurred if the same or an equivalent service had been made available by it; and
- (b) as respects a dental service, to the amount that would have been payable in respect of the same or an equivalent service if the service had been made available by the Department.

(8) Where the same or an equivalent service referred to in paragraph (7)(b) would have required approval<sup>(b)</sup> from the Dental Committee<sup>(c)</sup>, the Department—

- (a) may require the applicant to submit evidence as to the clinical necessity of the dental service; and
- (b) may decline to reimburse the cost of any service which was not clinically necessary.

(9) The Department may deduct from any amount to be reimbursed under paragraph (1) in whole or in part the amount of any health care charge which would have been payable for the same service or an equivalent service if the service had been made available by the Department; and in determining for this purpose the amount of any health care charge regard shall be had to any entitlement the eligible person would have had—

- (a) to any payment or contribution by virtue of regulations made under paragraph 2A(1) or (4) of Schedule 15; or
- (b) to any remission or repayment by virtue of regulations made under paragraphs 1(b) and 1B of Schedule 15.

(10) The Department may determine—

- (a) the form in which an application under this Article must be made; and
- (b) the information to be provided in support of the application.

(11) In this Article and Article 14C—

“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;

“Dental Committee” means the Dental Committee constituted under regulation 30 of the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993<sup>(d)</sup>;

“eligible person” means a person who is ordinarily resident in Northern Ireland;

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(a) Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems  
(b) See Schedule 5 to S.R. 1993 No. 326  
(c) See regulation 30 of S.R. 1993 No. 326  
(d) S.R. 1993 No. 326

“health care charge” means a charge payable by virtue of this Order or Article 20(1) of the Health Services (Primary Care) (Northern Ireland) Order 1997<sup>(a)</sup>;

“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 the provision of which 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 Article 14B(3)(b) or (c)**

**14C.**—(1) A person may apply to the Department for prior authorisation for the purposes of Article 14B(3)(b) or (c).

(2) The Department must grant an application for prior authorisation for the provision of health care which is a special service where—

- (a) the requested service is the same as or equivalent to health care that the Department would make or have made available to the eligible person under this Order or the 2009 Act in the circumstances of the person’s case; and
- (b) it cannot provide to the eligible person concerned, within a medically justifiable period, health care which is the same as or equivalent to the requested service.

(3) The Department need not but may grant an application for prior authorisation for the provision of health care which is—

- (a) a special service (which does not fall within paragraph (2)); or
- (b) a service mentioned in Article 14B(3)(c).

(4) For the purposes of paragraph (2), “a medically justifiable period” means a period which is justifiable on the basis of medical evidence as to the eligible person’s clinical needs, taking into account—

- (a) the person’s state of health at the time the decision under this Article is made;
- (b) the probable course of the medical condition to which the requested service relates; and
- (c) the other matters to which the Department is to have regard in assessing the case.

(5) The other matters include—

- (a) the eligible person’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 person 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, any such pain, disability, discomfort or suffering.

(6) The Department may determine—

- (a) the form in which an application under this Article must be made; and

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(a) S.I. 1997/1177 (N.I. 7)

- (b) the information to be provided in support of the application.
- (7) Any authorisation under this Article must be in writing.”.

**Travelling expenses of patients, etc.**

5. In Article 45(1) of the Order of 1972 (travelling expenses of patients, etc.), for sub-paragraph (a) substitute—

- “(a) by any person of a prescribed description for the purpose of availing himself of—
  - (i) such services under this Order, the 1991 Order or the 2009 Act as may be prescribed;
  - (ii) services in respect of which the costs are reimbursable under Article 14B; or
  - (iii) services authorised to be received in another EEA state or Switzerland under Article 20 or Article 27(3) of Regulation (EC) No. 883/2004;”.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on  
18th April 2012



*Eugene Rooney*  
A senior officer of the  
Department of Health, Social Services and Public Safety

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Health and Social Care (Reform) Act (Northern Ireland) 2009 and the Health and Personal Social Services (Northern Ireland) Order 1972 to give effect to the judgement of the European Court of Justice in Case C-372/04 *The Queen, on the application of Yvonne Watts v Bedford Primary Care Trust and Secretary of State for Health* ([2006] ECR I-4325). It held that the obligation under Article 49 of the EC Treaty to reimburse the cost of hospital treatment provided in another member State also applies to a tax-funded health service, such as in Northern Ireland, which provides such treatment free of charge. (Article 49, now numbered Article 56 under the Treaty on the Functioning of the European Union, provides for the freedom to provide and receive services in another member State of the European Union.) These Regulations also cover non-hospital treatment.

The Regulations make provision which is similar in effect to that made in England and Wales (S.I. 2010/915) and Scotland (S.S.I. 2010/283). Whilst the Regulations may to some extent reflect the general object of Chapter III (reimbursement of costs of cross-border healthcare) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 (on the application of patients' rights in cross-border healthcare), further legislation will be required to give effect to that Directive in UK domestic law, with transposition due to take place by late 2013.

The EEA (European Economic Area) consists of the member States of the European Union, together with Norway, Iceland and Liechtenstein.

Regulation 3 inserts a new section 3A into the Health and Social Care (Reform) Act (Northern Ireland) 2009 ("the 2009 Act"). Section 3A expressly enables the Department of Health, Social Services and Public Safety ("the Department") to provide health care referred to in section 3A outside Northern Ireland. It is conceivable that a particular case may justify or require the securing of aspects of the health care referred to in the new power from outside Northern Ireland. The amendment to section 8(6) of the 2009 Act provides that for the purposes of carrying out its functions the Regional Board may, on behalf of the Department, exercise the Department's power under new section 3A, as well as the general power under section 3.

Paragraph (1) of regulation 4 makes amendments to Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 ("the Order of 1972") which are necessary in relation to the amendments of that Order contained in both paragraph (2) of regulation 4 and regulation 5.

Paragraph (2) of regulation 4 inserts new Articles 14B and 14C into the Order of 1972.

The new Article 14B places a duty on the Department to reimburse qualifying EEA expenditure (defined in paragraph (3)) incurred on or after 10th May 2012, subject to the conditions for reimbursement of qualifying EEA expenditure (including certain requirements for prior authorisation of the expenditure), the exceptions that apply, any limits and restrictions that may be imposed and the health care charges that may be deducted.

Article 14C contains detailed provision about any prior authorisation that is required for the purposes of Article 14B(3)(b) or (c) (in relation to the health care services referred to there). The circumstances in which prior authorisation must be given by the Department are set out.

Regulation 5 amends the regulation making power in Article 45(1)(a) of the Order of 1972 in respect of travelling expenses to cover services the cost of which falls to be reimbursed under Article 14B or services authorised to be received (in another EEA state or Switzerland) under Article 20 or Article 27(3) of Regulation (EC) No. 883/2004.

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STATUTORY RULES OF NORTHERN IRELAND

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