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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 292**

**The National Health Service (Cross-Border Health Care) (Scotland) Regulations 2013**

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

- 8.—(1) The NHS Act is amended in accordance with this regulation.
- (2) Section 2CA(1) (functions of Health Boards outside Scotland) is renumbered as “2CB”.
- (3) In section 75B(2) (reimbursement of the cost of services provided in another EEA state) after subsection (1) insert—
- “(1A) But the duty in subsection (1) does not apply where section 75BA applies.”.
- (4) After section 75B insert—

**“75BA Reimbursement of the cost of services provided in another EEA State where expenditure is incurred on or after 25 October 2013.**

(1) This section applies where qualifying EEA expenditure is incurred by a person on or after 25 October 2013 (but see subsections (9) and (14)).

(2) A Health Board must, on an application made by the person, reimburse to that person the amount of the qualifying EEA expenditure incurred by that person, but this is subject to subsections (8) and (9), to any limit applicable under subsection (11) and to any deduction applicable under section 75D.

(3) 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 Scotland (“the patient”) of services as respects which condition A or condition B is met.

(4) Condition A is that the services—

- (a) are necessary to treat or diagnose a medical condition of the patient, and
- (b) are the same as or equivalent to services that a Health Board in whose area a patient resides would make or have made available to a patient under this Act in the circumstances of the patient’s case.

(5) But in the case of services which, although meeting the requirements in paragraphs (a) and (b) of subsection (4), fall within subsection (6), condition A is only met if, before the services were provided, the Health Board had given authorisation under section 75BB for the provision of the services to the patient.

(6) Services fall within this subsection if—

- (a) they are subject to planning requirements relating to the objective of ensuring sufficient and permanent access to a balanced range of high quality treatment or

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(1) Inserted by National Health Service (Reimbursement) of the Cost of EEA Treatment (Scotland) Regulations 2010 [S.S.I. 2010/283](#). A section 2CA was also inserted by the Smoking Health and Social Care (Scotland) Act 2005 [asp 13](#).

(2) Section 75B was inserted by [S.S.I. 2010/283](#).

to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources, and—

- (i) involve a stay in hospital accommodation for at least one night, or
  - (ii) require the use of highly specialised and cost-intensive medical infrastructure or medical equipment,
- (b) they involve treatments presenting a particular risk for the patient or the population, or
- (c) they are provided by a healthcare provider in circumstances that, on a case-by-case basis, could give rise to serious and specific concerns relating to the quality or safety of the care, with the exception of healthcare services which are subject to European Union legislation ensuring a minimum level of safety and quality throughout the European Union.

(7) Condition B is that before the services were provided the Health Board had given authorisation under section 75BB(4)(b) for the provision of the services to the patient.

(8) The duty in subsection (2) does not apply where the applicant for reimbursement incurred the qualifying EEA expenditure in connection with an arrangement which was entered into by or on behalf of the applicant in the course of business and under which the applicant has gained or might be expected to gain any financial benefit.

(9) This section does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No. 883/2004 apply.

(10) Subsection (11) applies where the services are the same as or equivalent to services that the Health Board in whose area a patient resides would have made available to that patient under this Act in the circumstances of the patient's case.

(11) The Health Board may limit the amount of any reimbursement under this section to the cost that the Board would have incurred if the same or an equivalent service had been made available by the Board to a patient resident in the Board's area.

(12) A Health Board may, on an application made by a person who receives reimbursement of qualifying expenditure under paragraph (2), reimburse to that person travelling expenses (including the travelling expenses of companions) incurred or to be incurred for the purpose of their obtaining any services reimbursed under this section.

(13) The Scottish Ministers 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.

(14) This section does not apply where expenditure is incurred in Iceland, Liechtenstein or Norway before 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 applies to that state in accordance with the EEA Agreement.

(15) In this section and section 75BB, "authorised provider", and "services" have the meaning given in section 75B.

### **75BB Prior authorisation for the purposes of section 75BA**

(1) A person may apply to a Health Board under this section for prior authorisation for the purposes of section 75BA in relation to the provision of services ("the requested services") to a person ordinarily resident in Scotland ("the patient").

(2) The requested services must be—

- (a) services which fall within section 75BA(6) and meet the requirements in paragraphs (a) and (b) of section 75BA(4), or
  - (b) services that are neither the same as nor equivalent to services that a Health Board in whose area the patient resides would make available to the patient under this Act in the circumstances of the patient's case.
- (3) The Scottish Ministers 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) A Health Board—
- (a) must authorise the provision of the requested services if they are services mentioned in subsection (2)(a) (but see subsection (5)), and
  - (b) may authorise the provision of the requested services in any case where—
    - (i) the requested services are necessary to treat or diagnose a medical condition of the patient, and
    - (ii) the duty in paragraph (a) does not apply.
- (5) The duty in subsection (4)(a) does not apply if at least one of the following conditions is met—
- (a) by receiving the requested services the patient would, according to a clinical evaluation, be exposed with reasonable certainty to a patient-safety risk that cannot be regarded as acceptable, taking into account the potential benefit for the patient of the requested service,
  - (b) the general public will be exposed with reasonable certainty to a substantial safety hazard as a result of the requested service,
  - (c) the requested service is to be provided by a healthcare provider that raises serious and specific concerns relating to the respect of standards and guidelines on quality of care and patient safety, including provisions on supervision, whether these standards and guidelines are laid down by laws or regulations or through accreditation systems established by the state in which the requested services will be provided,
  - (d) the Health Board can provide to the patient services that are the same as or equivalent to the requested services within a period of time that is medically justifiable, 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 requested services relate.
- (6) The matters to which a Health Board is to have regard in determining for the purpose of subsection (5)(d) whether the length of any delay is medically justifiable 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 requested services are 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 requested services would be likely to alleviate, or enable the alleviation of, the pain, disability, discomfort or suffering.
- (7) In section 75D(3) (deduction of NHS charges)—
- (a) in subsection (1) after “75B(1)” insert “or 75BA”;

(b) in subsection (2) after “75C” insert “or 75BA and 75BB”.

(8) Any authorisation or refusal of authorisation in part or full under this section must be in writing.

(9) In this section and section 75C “writing” includes an electronic communication as defined in section 15 of the Electronic Communications Act 2000(4) which has been recorded and is capable of being reproduced.”.

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(4) 2000 (c.7).