



EDITORIALS

Reciprocal healthcare arrangements after Brexit

People need clear guidance, to avert harm in the event of no deal

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Those EU 27 nationals who reside in or visit the UK, and vice versa, are currently entitled to healthcare under EU law. The law covers entitlements for people who are settled in a different country and includes, for visitors, the European Health Insurance Card (EHIC) system. The underlying ideas are reciprocity (people are entitled to medical treatment as if they were a national of the country providing it) and that the “home country” (where the patient has paid tax or national insurance) pays. The rules are quite complex and sometimes people use courts to enforce their entitlements. The European Commission operates as a clearing house for payments between countries and gives information to people about their rights.

On leaving the EU, the UK will no longer be part of this system. But the implications depend critically on whether the UK government secures a Brexit deal based on the current Withdrawal Agreement.¹

Deal . . .

The Withdrawal Agreement, if agreed, will give rights to EU 27 nationals and their families who are legally residing in the UK on 29 March 2019 until the end of the transition period (December 2020). Those rights include current healthcare entitlements. So, for instance, members of the UK health and social care workforce from EU 27 countries,² and their families, who are resident in the UK, will continue to have access to NHS care. The same will be true for UK nationals resident in EU 27 countries. Under the same agreement, some rights—including EHIC based treatment, planned cross border healthcare, and healthcare for pensioners—will continue after December 2020 for as long as the person concerned continues to be “in a situation involving both a member state and the UK at the same time,” which could be for the rest of a person’s life.³

After December 2020, UK law will apply to EU residents in the UK, and either EU law (for some long term residents),⁴ or the law of each member state will apply to UK residents in the EU.⁵ This will be the case unless reciprocal healthcare is covered in future agreements between the UK and the EU, or individual EU countries. On 26 October, the UK government published a bill⁶ empowering the Secretary of State for Health to make payments under international agreements for reciprocal

healthcare, leading to speculation that “back channel” discussions have taken place about such agreements post Brexit. So the Withdrawal Agreement would legally secure substantial continuity with the current position, at least until 2020.

. . . Or no deal

The opposite is true for a no deal Brexit. In that situation, access to healthcare after March 2019 would rely solely on existing laws in the EU (for UK nationals seeking healthcare in the EU) and in the UK (for EU nationals seeking healthcare in the UK). The EU (Withdrawal) Act⁷ promises legal continuity, including continuity of access to the NHS for EU nationals. But under a no deal Brexit, the government is likely to use powers under the act to alter the rules, so EU 27 nationals are treated like people from the rest of the world.

Under current English law, primary care, emergency care, and a small number of other treatments are free for everyone coming to England from other countries unless they have travelled specifically for the purpose of getting treatment.⁸ Access to other NHS services and to hospital care depends on residence, not nationality. Non-resident short term visitors to England would have to pay for NHS hospital care. Non-resident visitors staying for more than six months would have to pay an immigration health surcharge and 150% of the NHS national tariff for hospital treatment.⁸ Different rules apply in Scotland, Wales, and Northern Ireland.⁹

The position for UK nationals in the EU will be covered mainly by the laws in each country. These grant free emergency care, though define emergency differently. EU law gives rights to long term residents only. It will be difficult for UK nationals to find out their rights, and there will be no mechanism for EU countries to recoup the costs of treating them. Countries such as Spain may have to revise their provision, potentially leaving UK pensioners with no access to free healthcare. This in turn may increase pressure on the UK to tighten its rules on NHS treatment for EU nationals.

The situation is uncertain, and will be complex and difficult to navigate in the event of a no deal Brexit. While EU citizens resident in the UK would still be able to access free healthcare, UK citizens living in EU countries may not. This will cause

anxiety for most and more serious harm for those who, for instance, can no longer afford non-emergency treatment where they live. All forms of Brexit are bad for health: a no deal Brexit particularly so.

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- 1 Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. 19 March 2018. https://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf.
- 2 NHS Digital. NHS workforce statistics: September 2017: provisional statistics. 2017. <https://digital.nhs.uk/data-and-information/publications/statistical/nhs-workforce-statistics/september-2017-provisional-statistics>.

- 3 Hervey T. The implications of the European Commission Draft Withdrawal Agreement text for health: patients and reciprocal healthcare. 18 March 2018. <http://eulawanalysis.blogspot.co.uk/2018/03/the-implications-of-revised-european.html>.
- 4 Council Directive. 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. 2004. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0109>.
- 5 Department for Exiting the European Union. The future relationship between the United Kingdom and the European Union. July 2018. www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union.
- 6 Healthcare (International Arrangements) Bill. 2018. https://publications.parliament.uk/pa/bills/cbill/2017-2019/0279/cbill_2017-20190279_en_1.htm.
- 7 European Union (Withdrawal) Act. 2018. 2018. www.legislation.gov.uk/ukpga/2018/16/contents/enacted.
- 8 The National Health Service. (charges to overseas visitors) regulations 2015. 2015. www.legislation.gov.uk/uksi/2015/238/contents/made.
- 9 EU Home Affairs Sub-Committee on Brexit. Reciprocal healthcare. 11 October 2017. Oral evidence of Professor McHale. www.parliamentlive.tv/Event/Index/fd209c2a-4336-43ca-b0df-7e9aa19665d3.

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