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Conference abstract

Legal aspects with regard to integrated care: a long way to go

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Abstract

Introduction: The main purpose of this abstract is to raise awareness of the unsatisfactory legal situation with regard to integrated care. The abstract focuses on two major legal issues. First, I picture the actual legal situation regarding cross-border healthcare. Secondly, I describe the duties care providers and patients may face when entering into integrated care programs.

Cross-border healthcare: Currently, we lack an European legislative framework that regulates cross-border healthcare. One reason for this fact is that Article 152 EC treaty states that "Community Action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care" [1]. Therefore, it's up to each Member State to provide regulations with regard to cross-border healthcare services. Hence, patients need to deal with various national—often inconsistent—provisions when considering consuming cross-border healthcare. As a consequence, patients easily felt overstrained and the unclear legal situation prevents them from crossing a border to obtain healthcare. This often averts the establishment of integrated care models. As a result, patients lose the opportunity to receive more or different healthcare services and products in Member States other than the State in which they are living or are insured.

Nevertheless, it was the European Court of Justice (ECJ) with its continuous rulings in respect to cross-border healthcare that started with the harmonization process of cross-border healthcare legislation. The ECJ judges have ruled that freedom to cross EU borders for the best and quickest treatment is a right for all [2]. However, litigation before the ECJ suffers from deficiencies in this respect. In particular, the case law of the ECJ on the issue clearly shows the unsatisfactory nature of case-by-case ex post procedures for a complex and developing policy area. Further, litigation always leads to a winner and a loser, but does not foster an iterative, deliberate process in which the optimal accommodation of all affected interests is reached because the ECJ always decides on a particular case [3]. As a consequence, the European Commission has presented a proposal for a directive on the application of patient's rights in cross-border healthcare which reflects the decisions of the ECJ [4]. The aim of the proposed directive is—expressed in simplified terms—to ensure and to clarify the conditions for exercising patient's right to cross-border healthcare, and to create a framework for increasing cooperation between Member States. The proposal directive covers cross-border healthcare irrespective of how it is organised, financed or provided and whether it is private or public. The outcome of the proposed directive would be the reduction of obstacles faced when crossing the border in order to obtain healthcare. In case the proposed directive will be approved and will come into force, a major step in order to enlarge the possibilities to achieve integrated care is done. However, the Member States (e.g. Austria) take a critical stance towards the proposed directive and no one currently knows whether it will ever be approved [5].

The actor's duties with respect to integrated care programs: Entering into an integrated care program leads to legal challenges with regard to the actors. In particular, the question which duties are faced when entering into an integrated care program has not been raised yet. Therefore, patients find themselves in situations with a deficit of information and do not see the legal consequences when entering into an integrated care program. Patients often do not realise that they conclude an agreement with a health insurance company. They bind themselves for a certain period (sometimes several years) and they are contractually not allowed to rescind from the agreement. In general, integrated care programs offered from health insurance companies oblige the patient to consult the healthcare providers that are covered from the agreement. As a consequence, in case patients are not satisfied with the healthcare provider because of medical or personal reasons, no change to another healthcare provider is possible. Further, patients always enter into an implied health treatment agreement with the healthcare provider. In turn, healthcare providers do not have any certainties to be appointed from health insurance companies and, therefore, may lose essential revenues. In addition, healthcare providers are obliged to fulfil certain requirements (technical and organisational) in order to be appointed. In case they are not able anymore to continuously fulfil these requirements, health insurance companies may rescind their contracts. Having these issues in mind, one can assume that entering into an integrated care program implies various—often unseen—duties from different perspectives.

Conclusion: At a glance, the legal background of integrated care still raises a lot of unsolved problems both on a national and on a European level. As a next step, legal uncertainties should be made transparent in order to give the actors the possibility to discuss them. A consequence of this public discussion would be a cornerstone for more consumer-friendly healthcare models that would lead to better patient treatment and would enhance integrated healthcare.

Keywords

cross-border healthcare, legislation, European Court of Justice, patient's rights, legal duties, integrated care program

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Presentation slides