



## N - Necessary care

### References

- Recital(s): (15)IR
- BR : Articles 19 and 27
- IR: Article 25(A)
- AC Decision (s) : S01 and S03
- ECJ CASE Law: case C-326/00

### Comments

#### Overview of the legislation concerned

In view of the introduction of the European Health insurance Card (EHIC), Regulation (EC) No 631/2004<sup>1</sup> aligned the entitlements to health care during a temporary stay for all the different categories of insured persons (workers, self-employed workers, students, unemployed persons, pensioners, etc.). The concept of "immediate" health care was replaced by the concept of "necessary" health care in Article 22 (1) (a) of Regulation 1408/71.

The modernised coordination rules have carried this terminology over into Article 19 BR: during a temporary stay outside the competent Member State, .."an insured person ...shall be entitled to benefits in kind which become necessary on medical grounds during a stay in another Member State taking into account the nature of the benefits and the expected length of the stay".

One of the main innovations of this new provision is that medical evaluation by the medical practitioner becomes the key criterion for deciding whether the benefits shall be granted or not (that is, whether the treatment is necessary or not). It is thus the health care provider who determines whether the treatment is necessary or not. In Member States where no national health system is in place, the sickness insurance institution must accept this assessment by the health care provider.

In order to clarify the concept of "necessary care", Article 25 (A) IR incorporated the substance of the former Administrative Commission Decision 194. This contains pragmatic criteria for stakeholders to assess whether care is necessary in each individual situation. The most important point is to avoid an insured person from being forced to return home before the end of the planned duration of stay to the competent State to obtain the treatment his/her medical condition requires. The purpose thus of necessary care is to enable a person to continue his/her stay under safe medical conditions.

The Administrative Commission has adopted 2 decisions clarifying the concept of "necessary care":

- Decision S01 indicates that all necessary care is covered by the European Health Insurance Card;

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<sup>1</sup> OJ L100/1 of 6.4.2004



and

- Decision S03 defines specific groups of benefits which have to be considered as "necessary care", namely (1) benefits in conjunction with pregnancy and childbirth, (2) benefits in conjunction with pre-existing and chronic diseases and (3) necessary care for which a prior agreement with the specialised medical unit is required.

### How to implement these rules

The implementation of the above mentioned provisions requires a good understanding of the concepts of "temporary stay", of "necessary care", of "health care in conjunction with pregnancy and childbirth" and of "health care in conjunction with existing and chronic diseases".

### The meaning of temporary stay in the context of social security coordination

- Article 1 (k) BR defines "stay" as "temporary residence" distinguishing it from "residence" which is the place where a person habitually resides. It follows from this definition that residence is to be understood as the place where the person concerned does habitually reside. Article 11 IR gives some elements on the basis of which the residence of a person could be determined if there is disagreement between institutions on this (see also Explanatory Note on Residence).
- The concept of "temporary stay" is to be understood as a period during which a person is staying in a place other than the one where he habitually resides as long as he/she does not move the centre of his/her interests to that place. Relevant facts to assess the centre of interests are e.g. the person's intention, his family status and family ties, the source of his/her income, the nature of his/her activities, etc.
- The fact that a person is registered with the competent authorities in the place of stay in accordance with the requirements of Article 7 of Directive 2004/38/EC cannot be considered as proof of residence in the sense of Article 1 (j) BR. It follows from this that institutions are not allowed to limit the meaning of "temporary stay" to a period of 3 months.

### Some examples

- The fact that a student, who is studying in another Member State for more than 3 months, is registered with the local authorities in accordance with Directive 2004/38/EC cannot be considered as transfer of residence. If the intention of the student concerned is to return to his/her habitual residence after the end of the study period, he/she is staying temporarily in another Member State and can thus use his European Health Insurance Card during this period.
- The same is valid for posted workers. When a worker or self-employed worker is posted for a limited time period which does not involve a transfer of his/her habitual residence, he is to be considered as staying temporarily in another Member State and can thus use during this stay the European Health Insurance Card.



- Pensioners who spend a part of the year in Member State other than the one where they have their habitual residence, are to be considered as staying temporarily in the first Member State, if they keep the centre of their interest in the latter. This could be assessed on the basis of some criteria like e.g. their intention to return to the other Member State for a part of the year, their family situation, having a home, etc. During their stay they are entitled to necessary health care on the basis of their European Health Insurance Card.

### **The concept of "necessary care"**

It follows from the definition of the concept of "necessary care" in Article 25 IR that this concept is a flexible one that has to be assessed on a case by case basis, taking in to account the following criteria:

- A medical criterion: is the treatment necessary taking into account the health situation of the person concerned in order to allow the person to continue his/her stay abroad till the end of the planned duration? This assessment is of a medical nature and not an administrative one. It is clear that all emergency care does fulfil this criterion. A consultation with a general practitioner fulfils also this condition as an initial consultation is necessary in all cases as its purpose is to determine the problem at the outset. Preventive care, like vaccinations, seems to be excluded from the concept of "necessary care", except in the case when they become necessary to protect public health and /or where the duration of the stay justifies it.
- The duration of the stay abroad: the health care covered by the concept of "necessary care" varies in relation to the duration of the planned stay. It is obvious that this concept covers a broader range of health care for a student staying for 6 months in another Member State in the framework of an Erasmus study grant than for a tourist who is on a 2 weeks holiday. As an example, a tourist who breaks his leg during his holiday will be entitled to an operation; a student who is studying for 6 months abroad and who breaks his leg, will be entitled to an operation and to other related necessary treatments, such as physiotherapy. It is up to the health care provider to determine which treatment is necessary in relation to the duration of the stay.

### **Necessary health care in conjunction with pregnancy and child birth**

- All health care related to pregnancy or child birth must be considered as being necessary care except when the sole purpose of the stay is to give birth, e.g. in border regions. This restriction, however, must be applied carefully and assessed on a case by case basis.
- Special attention should be granted to the situation of migrant women who wish to go back to their home country to give birth there in order to take advantage of the help offered by their families. The purpose of the stay in their home country is not only to give birth but also to return to a familiar environment where they can count on the support of their relatives in the period before and after the birth of their child. Health care provided in this situation to mother and child should be considered as being necessary care and therefore covered by the European Health Insurance Card.



- A similar situation is the one where a woman wants to give birth in the State of residence of her husband or partner. In most of the cases, the future mother will not just go to the State of residence of her husband or partner to give birth and return immediately afterwards to her State of residence, but she will often stay with her husband or partner for a certain period before and after the birth of the child. Healthcare provided during the stay of the woman in the State of residence of her husband or partner (including care given to the child) is to be considered as necessary care and is covered by the European Health Insurance Card.

### **Necessary health care in conjunction with existing and chronic diseases**

- The Court of Justice ruled in Case C-326/00 that the concept of "necessary care" cannot be interpreted as meaning that those benefits are limited solely to cases where the treatment provided has become necessary because of a sudden illness.
- As a matter of fact, the freedom of movement of persons who have existing or chronic diseases cannot be limited for the sole reason that these persons might need care which is related to the illness they suffer from. This does not only concern treatments that became suddenly necessary during the stay abroad but does also concerns the continuation of treatment that started in the State of residence but that needs to be continued, e.g. persons who need regularly dialysis or persons who need monthly chemotherapy. These persons cannot be prevented from travelling because they need a specific treatment.
- Benefits provided in this situation are to be considered as "necessary care" and are thus covered by the European Health Insurance Card. However, in case when person requires some treatments accessible only in specialised medical units and/or by specialised staff, she/he needs in principle ensure, by contacting the health provider in the place of stay, the availability of treatment. Annex to Decision S3 contains non-exhaustive list of the treatments in question.

### **Specific situation of persons who need vital medical treatment only available in specialised medical units (Article 19(2) BR)**

- Some treatments are only available in specialised medical units. Article 19 BR stipulates that in this situation a prior agreement between the person concerned and the institution providing the care is required. This means that the person concerned should contact prior to his departure the medical unit of the place of stay which provides this specialised medical treatment, e.g. kidney dialysis, oxygen therapy or chemotherapy, to be sure that the treatment concerned can be provided during his stay.
- This provision does not mean that the person concerned requires a prior agreement for a specific treatment. There is no ground for this as this is not an authorisation in the context of scheduled care in Article 20 BR. It is just a practical way to guarantee that the treatment will be available for the person during the temporary stay. For this the most appropriate way is to contact the institution providing the care to make sure that it is available. So the person will receive a prior agreement from this institution. It is important to use agreement and not authorisation - see paragraph 2 of Article 19 BR.