

Hospital treatment in other EEA States

The EFTA Surveillance Authority (ESA) has received several complaints against Norway regarding access to hospital (“in-patient”) treatment in other EEA States - both as concerns authorisation and reimbursement - and decided in 2014 to start an examination of the relevant rules and procedures in general.

ESA has found that certain provisions in the Norwegian legislation are not in line with the EEA Agreement, in particular with Article 20 of [Regulation 883/2004](#) on social security coordination, [Directive 2011/24](#) on patients’ rights and [Article 36 EEA](#) on free provision of services. Today, ESA issued a reasoned opinion to Norway.

ESA has several concerns regarding the Norwegian legislation, in particular the Patients' Rights Act and the Prioritisation Regulation:

- rules which entail a necessity test as a basis for entitlement to in-patient treatment, which do not ensure that what is recognised in international medical science is taken into account when evaluating the expected benefit of treatment;
- rules prohibiting patients, whose medically justifiable deadlines for treatment under the national legislation have expired, from turning directly to a medical service provider in another EEA State to receive the treatment to which they are entitled upon the expiry of this deadline;
- the lack of rules determining whether equally effective treatment can be provided in Norway in due time, in relation to applications for authorisations/reimbursement of hospital treatment in other EEA States. The criteria do not adequately ensure a case-by-case assessment of whether equally effective treatment can be provided for the individual patient within a medically justifiable deadline nationally, but relate primarily to the existence of a general medical competence or adequate medical services in Norway;
- the abovementioned rules lack the clarity, precision and transparency which the case law and the Patients’ Rights’ Directive requires.

It should be noted that today’s reasoned opinion only concerns medical treatment that requires hospitalisation (in-patient treatment), not out-patient treatment.

Today’s reasoned opinion is the second step in the formal infringement procedure against Norway. Norwegian authorities now has two months to respond to the reasoned opinion. Ultimately, ESA may decide to refer the case to the EFTA Court.

ESA first issued a letter of formal notice in this case in [May 2014](#) to which Norwegian authorities replied in [August 2015](#) and [October 2015](#). ESA sent a supplementary letter of formal notice in [February 2016](#) to which Norway replied in [May 2016](#).