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(Acts whose publication is obligatory)

REGULATION (EC) No 631/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 31 March 2004

amending Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures

(Text with relevance for the EEA and for Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 308 thereof,

Having regard to the Conclusions of the Barcelona European Council of 15 and 16 March 2002 concerning the creation of a European Health Insurance Card,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) According to the conclusions of the Barcelona European Council of 15 and 16 March 2002 a European Health Insurance Card would replace the current paper forms needed for health treatment in another Member State. The Commission was called on to present a proposal to that effect before the Spring European Council of 2003. Such a card would simplify procedures.

(2) To attain and even surpass this objective by optimising the advantages offered by the European Health Insurance Card for insured persons and institutions, certain changes to Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and their families moving within the Community [3] are necessary.

(3) Regulation (EEC) No 1408/71 currently provides for access to different types of benefits in kind during a temporary stay in a Member State other than the competent State or the State of residence, depending on the category to which the insured person belongs, and draws a distinction between 'immediately necessary care' and 'necessary care'. For greater protection for insured persons, provision should be made to bring into line the rights of all insured persons in respect of access to benefits in kind during a temporary stay in a Member State other than the State in which the person concerned is insured or resident. In these conditions, all insured persons shall be entitled to the benefits in kind which become necessary on medical grounds during their stay in the territory of another Member State, taking account of the nature of the benefits and the expected length of the stay.

(4) It is essential that all measures be taken to ensure the proper implementation of Article 22(1)(a)(i) in all Member States with particular reference to care providers.

(5) For certain types of continuous treatment requiring a specific infrastructure, such as dialysis, it is essential for the patient that the treatment be available during his stay in another Member State. In this connection, the Administrative Commission establishes a list of the benefits in kind that are subject to prior agreement between the insured person and the institution providing the treatment in order to guarantee the availability of the care and the insured person's freedom to stay temporarily in another Member State.

[1] OJ C 32, 5.2.2004, p. 78.
[2] Opinion of the European Parliament of 4 December 2003 and Decision of the Council of 4 March 2004.
[3] OJ L 149, 5.7.1971, p. 2. Regulation as consolidated by Regulation (EC) No 118/97 (OJ L 28, 30.1.1997, p. 1) and last amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council (OJ L 187, 10.7.2001, p. 1).

(6) Access to benefits in kind during a temporary stay in another Member State is granted, in principle, on presentation of the appropriate form provided for by Regulation (EEC) No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 [1]. Certain Member States still require — formally, even if not in practice — the completion of extra formalities on arrival in their territory. These requirements, specifically the obligation to submit systematically and in advance a certified statement to the institution of the place of stay certifying entitlement to benefits in kind, appear today to be needlessly restrictive and of a nature to hamper the free movement of the persons concerned.

(7) Member States should ensure that appropriate information is provided regarding changes in rights and obligations introduced by this Regulation.

(8) For the effective and fair implementation of Regulation (EEC) No 1408/71, cooperation between the institutions and the persons covered by the said Regulation is indispensable. This cooperation presupposes, on the part of both institutions and insured persons, the provision of complete information on any changes that could affect entitlement to benefits, such as any cessation or change of the employment or self-employment of the insured person, any transfer of the residence or place of stay of that person or of a member of his family, changes in the family situation or amendments to legislation.

(9) Given the complexity of certain individual situations involving the movement of persons, provision should be made for a mechanism allowing institutions to rule on individual cases in which differing interpretations of Regulation (EEC) No 1408/71 and its implementing Regulation could jeopardise the rights of the person concerned. If a solution cannot be found whereby all the rights of the individual concerned are observed, provision should be made for the option of referring the matter to the Administrative Commission.

(10) In order to bring the Regulation into line with developments in data processing, in which the European Health Insurance Card is an essential element as it is intended in the long term to constitute an electronic medium readable in all Member States, certain Articles of Regulation (EEC) No 574/72 should be amended to cover the concept of document as any content whatever its medium, written on paper or stored in electronic form or as a sound or visual or audiovisual recording,

[1] OJ L 74, 27.3.1972, p. 1. Regulation as consolidated by Regulation (EC) No 118/97 and last amended by Commission Regulation (EC) No 1851/2003 (OJ L 271, 22.10.2003, p. 3).

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1408/71 is hereby amended as follows:

1. Article 22 shall be amended as follows:

   (a) subparagraph 1(a) shall be replaced by the following:

   '(a) whose condition requires benefits in kind which become necessary on medical grounds during a stay in the territory of another Member State, taking into account the nature of the benefits and the expected length of the stay;'

   (b) the following paragraph shall be inserted:

   '1a. The Administrative Commission shall establish a list of benefits in kind which, in order to be provided during a stay in another Member State, require, for practical reasons, a prior agreement between the person concerned and the institution providing the care;'

   (c) in paragraph 3, the first subparagraph shall be replaced by the following:

   'Paragraphs 1, 1a and 2 shall apply by analogy to members of the family of an employed or self-employed person.'

2. Article 22a shall be replaced by the following:

'*Article 22a*

Special rules for certain categories of persons

Notwithstanding Article 2, Article 22(1)(a) and (c) and (1a) shall also apply to persons who are nationals of one of the Member States and who are insured under the legislation of a Member State and to the members of their families residing with them.'

3. Article 22b shall be deleted;

4. Article 25 shall be amended as follows:

   (a) paragraph 1 shall be replaced by the following:

   '1. An unemployed person who was formerly employed or self-employed and to whom the provisions of Article 69(1) or Article 71(1)(b)(ii), second sentence apply and who satisfies the conditions laid down in the legislation of the competent State for entitlement to benefits in kind and cash benefits, taking account where necessary of the provisions of Article 18, shall receive for the period of time referred to in Article 69(1)(c):