

**Department of Health review of access to the NHS by foreign nationals:
Consultation on proposals**

MRN e-briefing and copy of submission

MRN e-briefing

The Department of Health (DoH) consultation on the *review of access to the NHS by foreign nationals*, launched in February 2010, has been long-awaited. It has emerged out of a joint review in this area embarked upon by the DoH and the Home Office in 2007. In 2009, the joint review reported back with a series of policy proposals. The consultation seeks public opinion on these proposals, as well as some other changes to the charging system which would have significant implications for migrants and refugees in the UK. The three main areas which MRN has focused on are:

1. The consultation seeks responses on a 'consolidation, restructuring and 'simplification' of the existing DoH Regulations. Guidance given to National Health Service (NHS) staff members around charging has also been updated. However, as well as making the regulations easier to understand, the changes appear to have **extended responsibility for assessing the chargeability of overseas nationals across a wide range of NHS bodies**. This would be likely to result in widespread confusion within the NHS and among migrants, and to result in erroneous decision-making and possibly discrimination towards migrants seeking healthcare.
2. The consultation seeks responses on **proposals to extend free healthcare to refused asylum seekers granted section 4 or section 95 support in the UK, and to unaccompanied children in the UK**. This is an important and positive proposal. There is a strong case to be made for extending the exemption from charging to a much wider group of migrants, including undocumented migrants who are likely to be among the most vulnerable migrants in the UK.
3. The consultation also seeks responses on the idea of introducing **mandatory health insurance for overseas visitors, or of strongly recommending that overseas visitors take out health insurance before they come**. This proposal is problematic – it would be likely to particularly disadvantage overseas visitors from low income backgrounds, developing countries or those who visit the UK for only short periods, as well as increasing the costs and barriers for all migrants applying to come to the UK.

In putting together this submission we have also drawn upon the comprehensive resources provided by Medact and the Entitlement Working Group, including a full briefing on the consultation proposals, and a model response. Visit here for these resources: <http://respondtonhscharging.wordpress.com/>

For further information or comment about this briefing, please contact Ruth Grove-White, MRN Policy Officer: Tel: 020 7920 6423 / r.grove-white@migrantsrights.org.uk.

Summary of current access to healthcare services for migrants

The NHS was created to “provide health services free at the point of need”, for “people of England and Wales”. Some form of charging regime for ‘overseas visitors’ has been in operation in the UK since 1982. In 2004 charging regulations were extended, making overseas visitors from some countries liable to be charged for accessing most secondary healthcare (including hospital services). This includes undocumented migrants such as people who have overstayed their visas, and refused asylum seekers regardless of whether they are receiving section 4 or section 95 support in the UK.

There are some treatments which overseas visitors are not charged for:

- Treatment on public health grounds. Treatment for highly infectious diseases e.g. TB and pandemic flu is free to all. Treatment for HIV is not free.
- Emergency treatment. Treatment in Accident and Emergency is always free. Urgent treatment elsewhere is not withheld although patients may later be charged for it.
- Bilateral agreements. Entitlement for treatment on a ‘needs arising’ basis of nationals of countries with which the UK has a bilateral agreement.

Usually, overseas visitors are provided with secondary healthcare and charged for it later. However all treatment that is immediately necessary should be given, irrespective of whether the patient will later be able to pay. Access to primary care is treated differently – general practitioners can register overseas visitors and treat them without charge under the NHS.

The DoH has issued guidance on how charges are issued and recovered from patients considered to be ‘overseas visitors’. As such, the NHS has a professional obligation to ensure that people who aren’t ‘ordinarily resident’ in the UK, and are liable for charges, are identified and that the payment is settled.

In practice, this can cause difficulties for a number of reasons, including the difficulties of determining patients’ immigration status in many instances. There is also a question mark over who should be responsible for verifying the immigration status of patients. The Department of Health is already clear that “*professional clinical staff should not be held accountable for administering immigration rules*”¹, but problems may also arise when frontline staff are required to administer immigration rules but are not adequately trained in the relevant regulations of immigration law in order to do so.

¹ Review of access to the NHS by Foreign Nationals: Consultation on proposals, Department of Health, February 2010. http://www.dh.gov.uk/en/consultations/liveconsultations/dh_113233

MRN Submission

Q1- Do you agree that the draft new consolidated Regulations provide a clearer, accurate and more succinct reflection of the existing Regulations?

No. The old regulations specify which bodies within the NHS have responsibility for issuing and recovering charges from overseas visitors. This means that the terminology is varied, depending on whether it refers to an 'Authority', an 'NHS foundation trust', a 'Primary Care Trust' or other. The new regulations replace these individual terms with the broad term of 'NHS body'. This has the effect of including a much wider range of NHS bodies in the charging regime, including Strategic and Special Health Authorities.

Although simplification of the regulations is welcome, the new regulations go beyond simplification as they widen the scope of the current charging system. The new regulations are not clear about the implications of these changes. We would be concerned that, for example, mental health services and emergency services would under the new regulations find themselves required to check the immigration status of people presenting to them in need.

The extension of responsibilities for checking and verifying immigration status across a wider range of NHS bodies would be likely to cause difficulties and confusion among front-line staff. It would also be likely to result in problems for patients, increasing the barriers for migrants in accessing healthcare services. Assessments of immigration status and entitlements require a detailed knowledge of the relevant parts of immigration law and European law, as well as of NHS regulations in this area. Dispersing responsibility for assessing chargeability across NHS staff increases the likelihood of people unfamiliar with this area making such assessments.

Public healthcare providers have a general duty under the Race Relations Amendment Act 2000² to eliminate unlawful racial discrimination, promote equality of opportunity, and promote good race relations between people of different racial groups. Extending the responsibilities for checking entitlement could cause an increase in erroneous decision-making, deterring or preventing people from accessing services on the basis of race, colour, nationality (including citizenship), or ethnic or national origin.

It is extremely important that the Department of Health makes fully clear which bodies and services are being put forward as responsible for assessing patients' entitlement to free NHS care. In addition, these responsibilities should be limited to those NHS staff members who are specifically trained and competent to make accurate assessments of entitlement.

Q2- Do you agree that the consolidated Regulations do not imply any material change in policy?

No. The consolidated regulations do embody material changes in policy. Under the consolidated set of Regulations, responsibility for deciding who must pay and for recovering charges is more widely dispersed across NHS bodies. This is likely to result in confusion, an increase in wrong decision-making, and in deterring people from accessing services. It could potentially lead to discrimination against migrants and even ethnic minorities more widely.

The current regulations impose charges for services provided at or by a hospital. The new regulations impose charges for all services which are not classed as primary medical

² http://www.opsi.gov.uk/acts/acts2000/ukpga_20000034_en_1

services. This scope of services covered by the new regulations is unclear. It could result in charging for all mental health services, other than those provided during detention under the Mental Health Act, which is a substantial change in policy. This could deter engagement with mental health services by vulnerable migrants.

Q3- Does the new draft guidance clearly and comprehensively explain how the consolidated regulations should be interpreted and applied?

No. Although the draft guidance goes some way to explaining the new Regulations, it doesn't fully make clear how checking immigration status can be reconciled with meeting clinicians' duty of care.

This is particularly of note in the section of the draft Guidance which states '*While it should not become the major factor, and where it is medically safe to do so, the financial consequences should play a role in the choice of treatment provided to chargeable overseas visitors who cannot pay or the limits imposed on their treatment, to the same extent that these considerations are taken into account for ordinarily resident NHS patients*'. This implies that lesser treatment may be given to migrants considered to be unable to pay – this is extremely problematic in terms of potentially offering second-class healthcare to people dependent on their immigration status or on the perception of their ability to pay afterwards.

Q4- Does Chapter 3 of the new Guidance document fully and clearly explain the NHS's obligations and requisite processes to ensure the provision of immediately necessary and urgent treatment to chargeable patients who are unable to pay prior to the treatment needing to be provided?

No. For example, reference to the use of posters within NHS facilities which make clear that patients unsure about whether or not they will be charged for treatment should refer to the reception desk are concerning. Receptionists are unlikely to be trained in determining chargeability on the basis of immigration status and should not hold this responsibility.

Chapter 3: Proposals for Change to the Charging Regulations

Q5- Do you agree with the proposal to exempt Section 4 and Section 95 failed asylum seekers from charges for NHS hospital treatment?

Yes. The proposal to stop charging refused asylum seekers in receipt of section 4 or section 95 for secondary healthcare is very positive. They will make a significant difference to the lives of some of the most vulnerable people living in the UK today.

More widely, there is a case to be made for the government to cease charging all undocumented migrants for care. A study by the London School of Economics (LSE) for the Greater London Authority in 2009 estimated that there were 618,000 undocumented migrants in the UK at the end of 2007.³ Many are working in low-paid and often dangerous occupations, and are likely to avoid contact with public service providers for fear of exposure. Extensions of the checking systems within the NHS, including the introduction of wider data-sharing with the UKBA, make it more likely that undocumented migrants will avoid seeking NHS healthcare, with serious implications for their health and public health more generally. The position of undocumented migrants on the margins of society is likely to expose them to greater mental and physical health risks than the rest of the population, including through undertaking work in unsafe conditions, overworking, stress and

³ <http://www.lse.ac.uk/collections/LSELondon/pdf/irregular%20migrants%20full%20report.pdf>

depression. It is more likely that preventable illnesses affecting undocumented migrants can develop into serious health concerns if they remain untreated. Particular concerns about the barriers faced by undocumented pregnant women in accessing healthcare have been well-documented by Project London.⁴

In addition, continuing to charge undocumented migrants for accessing public healthcare raises serious issues of fairness. Some undocumented migrants are UK tax-payers (as reported in Migrants Rights Network, 'Irregular migrants: the urgent need for a new approach'.⁵) Many have become undocumented as a result of problems within the immigration system itself. The LSE report estimates that 81% (505,000) of the undocumented migrants present in the UK in 2007 entered the UK via the asylum system, many at a time when the home office was not functional enough in order to resolve their applications. The numerous and complicated changes within the immigration system since 2005 have resulted in many people becoming overstayers through no fault of their own and, faced with little other choice, remaining here without legal status.

It would be right, both on the ground of fairness and of health concerns, to ensure that all people resident in the UK, regardless of their immigration status, were able to access free healthcare on the basis of need.

Q6- Do you agree with the proposal that any unaccompanied non-resident children should be exempted from NHS treatment charges?

Yes. The proposal to exempt unaccompanied minors (those present in the UK without a parent or guardian) from charging for NHS secondary care, is also extremely positive and would be welcomed. There is, however, a wider case to be made for this exemption to be extended to all children present in the UK, regardless of their immigration status. The UK has an obligation under the UN Convention on the Rights of the Child to ensure that no child is deprived of access to healthcare, and both the NHS and UKBA have legal duties under national regulations to have regard to the need to safeguard and promote the welfare of children. Removing the charging restrictions for all children would be a concrete step towards meeting those duties and ensure that health problems experienced among children were not able to become entrenched and more problematic later in life.

Q7- Do you agree that UK residents may be absent from the UK for up to six months in a year before potentially being liable for charges for NHS treatment under the Charging Regulations?

N/A

Q8- In respect of the proposals referred to in Questions 5-7 are you able to provide any additional data that may inform the calculations of costs and benefits?

N/A

Chapter 4: Tackling NHS Debt and Misuse

Q9- Do you agree with the proposal to require an overseas visitor receiving chargeable NHS treatment to provide personal information to aid subsequent recovery of charges?

⁴ <http://www.doctorsoftheworld.org.uk/lib/docs/165525-pl1styearreport.pdf>

⁵ http://www.migrantsrights.org.uk/files/publications/irregularmigrants_fullbooklet.pdf

No. There should be no obligation to provide any personal information which is not essential for the person to receive adequate healthcare. Collecting personal information is unlikely to result in recovery of charges and pressure to provide this information will encourage people to provide false names and addresses, particularly if it would be shared with the UK Border Agency. It is likely that healthcare providers would need to spend time gathering and verifying this information, which may in any case not make it easier to recover charges from them. This would be made more difficult for individuals unable to provide all the information required e.g. a permanent home address.

Q10- Do you agree with the proposal that NHS organisations must provide information relating to outstanding debt for NHS treatment to the Department of Health or to an appointed agency?

No. There should be no obligation for a NHS Trust to pass on any information that may make it liable or at risk of breaching patient confidentiality. The use of debt collection agencies may deter vulnerable people from approaching health services and should not be used.

Q11- What safeguards on the protection of personal information are needed beyond those described?

Safeguards should be introduced on who can access the personal information held by the NHS Counter Fraud Service. Personal information should not be passed on to any private companies, including debt collection agencies. Any transfer or access to any personal information should be logged and accountable to demonstrate good practice and no breaches of confidentiality.

Q12- Do you agree that the NHS Counter Fraud Service should transfer the data from the Department of Health's appointed agency to the UK Border Agency to support recovery and implement any agreed immigration sanctions under rules approved by parliament?

No. Personal information should not be transferred to the UKBA or any immigration body from the National Health Service. Health services should remain independent of immigration controls and sanctions. There is a risk that the information could incorrectly identify an overseas visitor and result in refusal of entry, or of renewal of stay in the UK. Refusing entry to some individuals may impact on entry to the UK by their dependents, such as UK-resident children or elderly relatives.

The consolidation of a data-sharing relationship of this transfer of data between the NHS and the UKBA would be likely to result in fewer documented and undocumented migrants seeking healthcare at an early stage when illnesses could be treated and prevented from worsening. This would be likely to result in longer term individual and public health risks and a potential burden on the emergency services.

Q13- Do you agree that the Secretary of State Directions to the NHS Business Services Authority should be amended to enable the NHS Counter Fraud Service to lawfully carry out the data transfer process?

No. The NHS Counter Fraud Service should not be involved in the data transfer process. Increasing the number of agencies in the process is likely to lead to a breach of confidentiality, or in the possibility that data could be misused beyond the original data-sharing purposes.

Chapter 5: Health Insurance for Overseas Visitors

Q14- Do you support the principle that a requirement for chargeable overseas visitors to have health insurance should be introduced to cover the costs of any NHS treatment they may require during their stay?

No. This should not be a mandatory requirement. Applying to enter or stay in the United Kingdom is already an expensive, lengthy and onerous process for migrants, in particular migrants from developing countries or those from low income families. Most migrants, particularly those coming for short visits, are unlikely to seek healthcare during their stay – for many it would be an unnecessary expense, advantaging only private insurance companies.

Q15- What issues may arise from a system of either strongly recommended or mandatory health insurance for chargeable overseas visitors? How might these be overcome?

Introducing a mandatory health insurance requirement would particularly disadvantage those migrants coming from developing countries or from low income backgrounds. People from many countries do not have ready access to reliable and affordable health insurance providers, meaning they would be disadvantaged by this requirement. There is no evidence that this is necessary or would be workable in the UK context.

It would better for people applying to enter the UK to be made aware of their entitlement to healthcare in the UK, and healthcare insurance could be one recommendation made at that stage. If it is not a mandatory requirement of entry, however, there would be no justification for Entry Clearance or Immigration Officers to check for evidence that migrants have taken out healthcare insurance. Either it is a requirement for entry or it is not.

Q16- Do you support the principle that some overseas visitors who are currently exempted from charges should instead fund their treatment costs through health insurance?

No. Those overseas visitors who are currently exempted from charges have been made exempt for good reason – often on the basis that they are considered to be unable to pay. It would make no sense to require them to incur additional costs through taking out health insurance.

Q17- What practical issues may arise if particular categories of overseas visitors or temporary residents were required to cover or insure their own healthcare costs rather than be entitled to free NHS treatment? How might these be overcome?

There should be no mandatory health insurance requirement in order to enter the UK, regardless of which immigration category visitors fall into.

Please feel free to submit any further comments on these draft regulations below.

Overall, whilst lifting the NHS charging restrictions for some particularly vulnerable groups of migrants would have a beneficial effect, this should not be accompanied by a wider increase in checks on immigration status across the NHS. Other policy initiatives have demonstrated the range of problems which can arise from assigning responsibility for checking immigration status to people who are not trained immigration officials. Recent regulations requiring employers and higher education establishments to check documents have shown that most people are unfamiliar with the vagaries of immigration law and regulations.

Following the introduction of sanctions against employers of undocumented migrants in February 2008, there have been widespread accounts of employers making mistakes in assessing migrants' right to work in the UK from their documents, leading to discrimination (see Migrants Rights Network, 'Papers Please', November 2008.⁶) In cases reported by

⁶ http://www.migrantsrights.org.uk/files/publications/papers_please.pdf

trades unions, the urge to 'play it safe' has led some employers to discriminate against people with less familiar documents. Difficulties have also been reported among some foreign students in the higher education sector, as a result of the increased reporting responsibilities of academics and university staff (See Manifesto Club, Fortress Academy: the Points Based Visa system and the policing of international students and academics, February 2010).⁷

⁷ <http://www.manifestoclub.com/fortressacademy>