

## Access to secondary health care for migrant children, young people and families

This fact sheet looks at eligibility for free secondary health care, and the immigration health charge.

For primary healthcare (e.g. GPs, dentists) please see our fact sheet on this issue at [www.coramchildrenslegalcentre.com/resources](http://www.coramchildrenslegalcentre.com/resources).

If you have any questions about this issue relating to a refugee or migrant child, young person or family, you can call our Migrant Children's Project advice line on 0207 636 8505 or email [mcp@coramclc.org.uk](mailto:mcp@coramclc.org.uk).

### What is secondary healthcare?

Secondary (or 'acute') care is the healthcare that people receive in hospital. It may be unplanned emergency care or surgery, or planned specialist medical care or surgery. If someone goes to hospital for planned medical care or surgery, this will usually be because their GP, or another primary care health professional, has referred them to a specialist.

### Eligibility for free secondary health care

Secondary healthcare is available on the NHS, free of charge for anyone who is 'ordinarily resident' in the UK. [1] A person was previously regarded as 'ordinarily resident' if she or he was lawfully living in the UK voluntarily and for a settled purpose. However, the definition of 'ordinarily resident' changed under the Immigration Act 2014 and for non-EEA nationals is now limited to people who have 'settled status' in the UK (i.e. they have indefinite leave to remain). [2] Those who do not have settled status may in some situations be charged for services.

The following treatment is exempt from any charge:

- Accident and emergency (but not treatment as an inpatient or outpatient)
- Family planning

- Services not provided at a hospital, or under the direction of or by a member of staff at a hospital;
- Treatments of certain communicable diseases such as measles, mumps, food poisoning, malaria and TB
- Diagnosis and treatment of specified infectious and sexually-transmitted diseases (including HIV)
- Treatment for torture, female genital mutilation, domestic violence or sexual violence, provided that the overseas visitor did not come to the UK to get treatment [3]

Treatment that is immediately necessary (i.e. needed to save a patient's life, prevent a condition from becoming immediately life-threatening or to prevent permanent serious damage) must be provided to any person even if they have not paid in advance. All maternity services, including routine antenatal treatment, must be treated as being 'immediately necessary'. However, this does not mean that it will be free of charge – instead payment will be sought after treatment has been provided. NHS bodies can share data with the Home Office on non-EEA patients with a debt of £500 that has been outstanding for three months and the Home Office can then use that data to deny any future immigration application to enter or remain in the UK that the person with the debt might make. [4]

Otherwise, those with limited or no leave may have to pay for their secondary healthcare unless they fall under one of the exemptions, which include:

- Refugees
- Asylum seekers, including those with fresh claims [5]
- A person seeking, or who has been granted, humanitarian or temporary protection under the Immigration Rules

- A person in receipt of support under section 95 Immigration and Asylum Act 1999 (asylum seekers and refused asylum seeking families)
- A person in receipt of support under section 4 Immigration and Asylum Act 1999 (refused asylum seekers)
- Victims of human trafficking (who have been referred to the National Referral Mechanism and received a reasonable grounds decision)
- Failed asylum seekers who are supported by a local authority under section 21 of the National Assistance Act 1948
- Children who are in the care of a local authority and children accommodated by a local authority
- Those with enforceable EU rights (and family members – i.e. their spouse/ civil partner or child for whom they have parental responsibility)
- A child born in the UK to an exempt parent is exempt for up to three months while still in the UK
- Migrants who have paid the Immigration Health Charge, or who are exempt from paying such a charge (see below) **[6]**

*Please note the list above does not cover all exemptions.*

Individuals who are exempt at the start of treatment can continue to receive a course of treatment without charge even if they cease to be exempt at some point, apart from those who are exempt because they have paid (or did not have to pay) the Immigration Health Charge. **[7]**

### Immigration health charge

From 6 April 2015, any non-EEA national making an application for limited leave to enter or remain in the UK for more than six months will have to pay a 'health charge' **[8]** alongside their application fee. This will also apply to those already in the UK applying to extend their leave. The charge is £200 per year (apart from students and their dependants

who will be charged £150 year) **[9]** for the maximum period of leave which could be granted under the Immigration Rules. So, for example, if applying for 2 ½ years' leave, the applicant would need to pay a health charge of £500. Dependents will be charged the same amount as the main applicant. If no fee is paid then the application will be deemed to be invalid and will not be processed.

Certain applications are exempt from the charge. **[10]** These include:

- A claim for asylum or humanitarian protection
- A claim under Article 3 of the European Convention on Human Rights
- An application as a victim of human trafficking
- Destitution Domestic Violence Concession
- Any application for leave to remain made a child being looked after by a local authority **[11]**
- Any application made by a New Zealand or Australian national

The Home Office also has discretion to reduce, waive or refund all or part of the charge. **[12]** There is no guidance on how this discretion might be used – it will be case by case on an exceptional basis. If an applicant is exempt from paying a fee for their application under the fee waiver policy it may also be possible that payment of the immigration health charge could be waived, but there is no formal policy on this. **[13]**

Once paid, the health charge covers the individual for the period of leave granted and the period of time waiting for a decision when an application to extend their leave has been submitted. **[14]**

The health charge cannot be imposed on those who made applications for leave to enter or remain before the new system came into force on 6 April 2015. **[15]**

If an application is refused, the applicant should be automatically refunded without have to take any further action.

## The effect of changes on children and families

As charges do not apply to refugees, asylum seekers and children in care of a local authority, the main groups of children and young people affected by the changes outlined above will be migrant children in families and care-leavers who are 'unlawfully in the UK'. There are many migrants who are in receipt of local authority support because they are destitute and who have enforceable rights to remain under the family and private life rules but do not have indefinite leave to remain.

Many families with children in need receiving support from a local authority under section 17 of the Children Act 1989 will have to pay the Immigration Health Charge when they make their application for leave to remain under the family migration rules or outside of the rules on Article 8 grounds. Migrants regularising their stay or applying for an extension of leave to remain will incur this additional charge, on top of the application fee and the cost of legal advice to prepare the application. As those qualifying for an application fee waiver could potentially also have the health charge waived, it is really important that individuals in receipt of local authority support discuss this with their legal representatives and that local authorities supply evidence of the assistance they are providing in order to support a request for a fee waiver.

It is important also to note that some young EU nationals may face difficulty demonstrating that they are 'exercising treaty rights' and are 'properly settled in the UK for the time being' if they do not have the correct documentation. [16]

## NOTES

- [1] An 'overseas visitor' liable to charging means 'a person not ordinarily resident in the UK', Regulation 2, NHS (Charges to Overseas Visitors) Regulations 2015, SI 2015/238
- [2] Section 39, The Immigration Act 2014
- [3] Regulation 3, The National Health Service (Charge to Overseas Visitors) Regulations 2015
- [4] Department of Health, Guidance on implementing the overseas visitor hospital charging regulations 2015, Chapters 8 and 12
- [5] Department of Health 'Guidance on Implementing Overseas Visitors Hospital Charging Regulations', 31 October 2013, acknowledges fresh asylum claims to be included
- [6] Part 4 'Overseas visitors exempt from charges', The National Health Service (Charge to Overseas Visitors) Regulations 2015
- [7] Department of Health, Guidance on implementing the overseas visitor hospital charging regulations 2015, Chapters 8 and 12
- [8] Section 38 of The Immigration Act 2014 provides for an 'immigration health charge' for people applying for permission for leave to enter or remain
- [9] The Immigration (Health Charge) Order 2015, SI 2015/792 specifies the annual amount
- [10] Schedule 2, Immigration (Health Charge) Order 2015,
- [11] Under section 22(1) of the Children Act 1989, or equivalent legislation in Scotland, Wales and Northern Ireland
- [12] Section 8, Immigration (Health Charge) Order 2015,
- [13] No Recourse to Public Funds Network, 'Secondary healthcare charging reforms due to be implemented in April 2015' at <http://www.nrpfnetwork.org.uk/News/Pages/Immigration-Health-Charge.aspx>
- [14] Where leave extended by the Immigration Act 1971 sections 3c or 3d
- [15] Part 4 'Overseas visitors exempt from charges', The National Health Service (Charge to Overseas Visitors) Regulations 2015
- [16] Department of Health, Guidance on implementing the overseas visitor hospital charging regulations 2015, Chapter 3

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Call 0207 636 8505 or email [mcp@coramclc.org.uk](mailto:mcp@coramclc.org.uk)