

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

This fact sheet looks at eligibility for free secondary healthcare, up-front charging for services, and the immigration health surcharge. This fact sheet applies to England only.

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

### What is secondary healthcare?

Secondary care is the healthcare that people receive in hospital or clinic. 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.

### Up-front charging for secondary healthcare

Since 23 October 2017, NHS service providers in England have been subject to [new regulations](#) relating to charging for services up-front. [1]

NHS service providers including charities are now obliged to charge the estimated full cost of treatment from some patients in advance of treatment, unless doing so would prevent or delay the provision of immediately necessary or urgent care. [2]

### Eligibility for free secondary healthcare

Secondary healthcare is available on the NHS, free of charge for anyone who is 'ordinarily resident' in the UK. [3] 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). [4]

The following treatment is exempt from any charge:

- Accident and emergency, including ambulance services (but not treatment as an inpatient or outpatient)
- Family planning
- Palliative care services, where provided by an organisation that is a registered palliative care charity or a community interest company (even if part-funded by the NHS)
- 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)
- Any treatment provided by school nurses and health visitors
- 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 [5]

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 (see charging section below).

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. [6]

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 [7]
- 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) [8]

*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 surcharge. [9]

### **Immigration health surcharge**

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' [10] 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 and individuals on Tier 5 Youth Mobility visas who will be charged £150 year) [11] 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. [12] 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 looked after child [13]
- 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. [14] 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. [15]

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. [16]

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

### **Charging and the effect on children, young people 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'.

Charging, up-front or otherwise, has been shown to deter vulnerable individuals from accessing any treatment at all. Independent research in 2017 found that mothers and children were at particular risk. [18]

Families supported by a local authority under section 17 of the Children Act 1989 can use this support as evidence of destitution in order to qualify for a fee waiver, leading to the health surcharge also being 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. [19]

### **NHS debts**

Part 9 of the Immigration Rules lays out that an individual's debt to the NHS of £500 or more will normally lead to a refusal of an application for entry clearance or leave to remain. There are equivalent provisions in other parts of the Immigration Rules for different immigration categories. [20]

In all cases refusal on the basis of an outstanding debt to the NHS is a discretionary power; this means

that the Home Office will only 'normally' refuse the application, but does not have to do so. [21]

Previously having owed money to the NHS for treatment, even if this money has been paid off, might lead to an enhanced risk of refusal in the future. The Home Office policy document [General grounds for refusal Section 4 of 5: considering leave to remain](#) states that:

*You must consider whether the applicant has sufficient funds to support themselves in the UK, given that they previously had an outstanding healthcare debt. You must also consider whether they intend to access further NHS treatment without paying, unless such access is permitted on the route under which they are applying. [22]*

### **Alternative services**

Some UK charities provide alternative services for individuals who cannot access the NHS. Doctors of the World UK runs regular and pop-up clinics in London. [23] The Migrant Women's Rights Service at Maternity Action runs an advice line for pregnant women subject to immigration control, and is in particular assisting in cases where women have built up an NHS debt that puts them in line to have an immigration application refused under the general grounds for refusal. [24]

### **NOTES**

[1] Department of Health, 'Guidance on implementing the overseas visitor charging regulations', October 2017

[2] The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017

[3] 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

[4] Section 39, The Immigration Act 2014

[5] Regulation 3, The National Health Service (Charge to Overseas Visitors) Regulations 2015

[6] Department of Health, 'Guidance on implementing the overseas visitor charging regulations', October 2017, Chapter 9

[7] Department of Health 'Guidance on implementing the overseas visitor charging regulations', October 2017, paragraph 7.45

[8] Part 4 'Overseas visitors exempt from charges', The National Health Service (Charge to Overseas Visitors) Regulations 2015

- [9] Department of Health, 'Guidance on implementing the overseas visitor charging regulations', October 2017, Paragraph 7.65
- [10] Section 38 of The Immigration Act 2014 provides for an 'immigration health charge' for people applying for permission for leave to enter or remain
- [11] The Immigration (Health Charge) Order 2015, SI 2015/792 specifies the annual amount
- [12] Schedule 2, Immigration (Health Charge) Order 2015,
- [13] Under section 22(1) of the Children Act 1989, or equivalent legislation in Scotland, Wales and Northern Ireland
- [14] Section 8, Immigration (Health Charge) Order 2015,
- [15] No Recourse to Public Funds Network, 'Secondary healthcare charging reforms due to be implemented in April 2015'
- [16] Where leave extended by the Immigration Act 1971 sections 3c or 3d
- [17] Part 4 'Overseas visitors exempt from charges', The National Health Service (Charge to Overseas Visitors) Regulations 2015
- [18] Doctors of the World, 'Deterrence, delay and distress: the impact of charging in NHS hospitals on migrants in vulnerable circumstances', October 2017
- [19] Department of Health, 'Guidance on implementing the overseas visitor charging regulations', October 2017, Chapter 9
- [20] Paragraph 322 (12) of Part 9 of the Immigration Rules
- [21] See Free Movement, 'General grounds for refusal: owing a debt to the NHS', at <https://www.freemovement.org.uk/general-grounds-refusal-owing-debt-nhs/>
- [22] Home Office, 'General grounds for refusal: considering leave to remain', April 2017
- [23] See <https://www.doctorsoftheworld.org.uk/our-clinics>
- [24] See <https://www.maternityaction.org.uk/advice-2/migrant-womens-rights-service/>

**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 by email: [mcpadvice@coramclc.org.uk](mailto:mcpadvice@coramclc.org.uk) or telephone: 0207 636 8505 (telephone only open Tuesday to Thursday 10am-2pm).**