

## Access to secondary (hospital) care by migrants

Trusts' duties to provide free health care and medical treatment to migrants



### Introduction

This briefing will examine the rights of migrants who require health services in Northern Ireland and Trusts' duties towards them. It is a complex area of law so you should seek advice if you are in any doubt about someone's entitlement to free health care. The Law Centre's Community Care advisers will be happy to help.

### Background

Migrants are people who have come from outside the United Kingdom to live in Northern Ireland on a permanent or temporary basis. They may be here to seek or take up work. Many are students. Some are refugees or asylum seekers who have fled persecution in their country of origin. Others are asylum seekers who have exhausted the asylum appeal process but continue to live here.

### 1. Who is entitled to health services free of charge?

Regulations<sup>1</sup> provide that people who are 'ordinarily resident' here are exempt from charges for National Health Service treatment. Entitlement to free treatment is not, therefore, determined by nationality or whether a patient has paid national insurance contributions.

A person who is not ordinarily resident here is a visitor. Visitors are essentially here on a short term basis. Exemptions to charges exist for certain classes of visitors. Some visitors may become ordinarily resident.

Statutory charges apply to some health services such as prescriptions and the services of dentists and opticians. These are means tested. Most other health services are free of charge. The Regulations provide that services forming part of the National Health Service here are available free of charge to the following groups of people.

#### 1.1 People who are 'ordinarily resident'

Anyone who is deemed to be ordinarily resident is entitled to free NHS treatment in Northern Ireland.

Departmental Guidance<sup>2</sup> describes as ordinarily resident someone who is "lawfully living in Northern Ireland voluntarily and for a settled purpose as part of the regular order of his/her life for the time being."

Deciding whether someone is ordinarily resident will depend on the facts as they apply at the time in each individual case. The person should have an identifiable purpose for her/his residence here and that purpose must have a sufficient degree of continuity to be properly described as settled.<sup>3</sup> The Guidance suggests that it is unlikely that anyone coming to live here but intending to stay for less than six months will be ordinarily resident but acknowledges that there is no minimum period of residence.

#### ■ Asylum seekers and refugees

The Regulations provide that people who have been granted refugee status or those who are in the process of applying for refugee status (asylum seekers) are 'ordinarily resident' and are therefore entitled to have free medical care and treatment under the National Health Service.

Asylum seekers who have exhausted the appeals process and been refused refugee status but continue to live here may also be entitled to free health care. This is as a result of a recent High Court decision in England.<sup>4</sup> The decision states that, if removal directions have not been set by the Home Office and the refused asylum seeker continues to live in the UK, then s/he remains ordinarily resident for the purposes of health care under the NHS.

#### ■ Migrant workers

Migrants working here either in an employed or self employed capacity are ordinarily resident unless their period of residence is intended to be for less than six months. Six months is a guideline only.

#### ■ Cross border workers

Persons living in the Republic of Ireland and working in Northern Ireland who travel home daily or on a regular basis (eg at week-ends) are entitled under European law to the full range of health services here on the same basis as residents. Dependents of

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cross border workers are not entitled to the full range of health services.

#### ■ **Students**

Migrant students are considered ordinarily resident if their course of study is substantially funded by the UK government or is of at least six months duration. If their course of study is for a period of less than six months, advice should be sought.

#### ■ **Students who have overstayed**

Some migrant students may have stayed longer than their visa permits. Before making a decision in this type of situation advice should be sought. Migrants in this position can often be very vulnerable so each case should be decided on its own merit.

### **1.2 People who are not 'ordinarily resident': visitors**

A visitor is someone who is not ordinarily resident although some visitors may become ordinarily resident. Visitors' entitlement to free health services is more restricted than that of people who are 'ordinarily resident'. Visitors include the following groups of people.

#### ■ **Visitors who are residents of a European Union country**

If they are insured under their country's health system, residents of a country in the European Union and Switzerland (and their family members) are entitled to all 'necessary' treatment when in Northern Ireland (see Appendix 1).

'Necessary treatment' means diagnosis of symptoms or signs occurring for the first time after the visitor's arrival here and any other treatment which in the opinion of a medical practitioner is required promptly for a condition which arose after the visitor's arrival or became acutely exacerbated after her/his arrival. It includes a situation where the condition would be likely to become acutely exacerbated without treatment.

Pregnant women are entitled to antenatal and post natal maternity care.

#### ■ **Visitors from a non EEA country that has a reciprocal agreement with the United Kingdom**

There are a number of non-European countries with reciprocal healthcare arrangements with the United Kingdom (see Appendix 2). Eligible residents of these countries are entitled to 'immediately necessary' treatment for conditions arising or

becoming acutely worsened during a temporary visit to Northern Ireland. It includes cases where treatment is needed to prevent a pre-existing condition increasing in severity. It does not include routine monitoring of an existing condition such as diabetes. The arrangements do not cover situations where people come here without an explicit referral, in order to access treatment.

#### ■ **Visitors from a country which is a signatory to the European Social Charter and / or the European Convention on Social and Medical Assistance (ECSMA)**

There are a number of countries which, although they do not have reciprocal health care agreements with the United Kingdom, have signed the European Social Charter and/or the European Convention on Social and Medical Assistance. People from these countries, such as Turkey, should not be charged for treatment for which the need arose during their visit here if they are unable to pay.

#### ■ **Workers and students carrying Form E128**

Workers and students from EEA member states (and members of their family who accompany them) who are here temporarily and who carry form E128 are entitled to 'necessary' treatment for any condition. Their entitlement is not restricted to treatment that is immediately required. They can receive full health care on the same terms as people who are ordinarily resident.

If a student from an EEA country does not carry a form E128, s/he will still be entitled to full health care services if her/his course of study is substantially funded by the UK government or is of at least six months duration.

### **1.3 People who are lawfully resident**

People who have resided lawfully in the United Kingdom for not less than one year immediately preceding the time when the services are provided should not be charged for health services under the NHS. They are entitled to health services to the same extent as those who are ordinarily resident here.

The term 'residing lawfully' is not defined in the legislation/regulations and has yet to be interpreted in common law. However, the European Convention on Social and Medical Assistance deems residence lawful where a person has a legally required permit or permission to reside in the country. In calculating a period of residence, any interruption by reason of temporary absence of not more than three months is disregarded.

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## 2. Documents required

People who are ordinarily resident can apply for and should receive a medical card from the Central Services Agency.

### ■ Asylum seekers

An asylum seeker who has not applied for or whose application for a medical card has not been processed should have a Form 1S96 containing her/his personal details and photograph and date of application for asylum. This is issued following the first screening interview.

Prior to interview, a letter confirming the applicant's name, date of birth and date of application for asylum from 'Bryson House One Stop', the Law Centre or a solicitor acting for the applicant would be sufficient proof of her/his status.

### ■ European nationals

European nationals should have a European Health Insurance Card (EHIC). If the card has been lost or stolen, the applicant should produce a Provisional Replacement Certificate (PRC). If s/he is unable to produce either of these a passport, travel card, identity or residence card should be acceptable.

### ■ Others

A passport, residence permit, identity card or social security card.

The list of relevant documents is not exhaustive. If a person seeking medical care is not able to produce the requisite documentation, advice should be sought.

## 3. No recourse to public funds

Overseas visitors are not prevented from accessing free NHS treatment because of this stamp on their passport. 'No recourse to public funds' does not apply to NHS services or treatment.

## 4. Case examples

1. Alina is a Polish national who has been living and working in Northern Ireland for ten months. She intends to stay here for the foreseeable future and her husband and daughter have moved to live with her. Alina becomes ill and requires hospital treatment. Her individual circumstances show that she is 'ordinarily resident' as she is here voluntarily and has a settled purpose. She is, therefore, entitled to treatment under the National Health Service free of charge.

Alina's Polish friend Jasia decides to holiday in Northern Ireland and stay with Alina. Jasia,

who is four and a half months pregnant, becomes ill while she is here. Jasia is not 'ordinarily resident' but is a visitor from an EEA country. She is entitled to free health services connected with her illness. Should her baby be born during her stay here, she is entitled to post natal maternity care free of charge.

## 5. Emergency treatment - always exempt from charges

Everyone in Northern Ireland, whether ordinarily resident or a visitor, regardless of nationality and immigration status, is entitled to the following medical services/treatment free of charge.

- Emergency or immediately required treatment at a hospital accident and emergency department unless and until the patient is accepted as an in-patient. Emergency treatment is any "*treatment which the clinician considers to be immediately required owing to an accident or other emergency*" and which does not exceed fourteen days. Practitioners therefore have a discretion to decide what constitutes emergency care.
- Any treatment given in a walk-in centre providing similar services to those of an accident and emergency department of a hospital.
- Treatment for certain diseases including food poisoning, Hepatitis B and Tuberculosis (see Appendix 3).
- Services consisting of the provision of family planning services.
- Treatment for sexually transmitted diseases, but not for HIV except regarding initial testing and counselling.
- Compulsory psychiatric treatment.

### *Treatment which is not exempt*

Where there is no exemption from charges 'immediately necessary' treatment should be provided regardless of the patient's ability to pay. Charges can be recovered later.

## 6. Human rights in secondary care

A decision to charge for health services could prevent a patient accepting the service. This could lead to serious illness for the patient concerned. Before reaching a decision to charge for health services, a practitioner should always consider the impact of her/his decision on the individual's human rights. Decisions by public bodies including trusts may be challenged.

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## 7. Conclusion

The law governing the rights of migrants to access health care is complex. This briefing provides an insight into some of these rights and into Trusts' duties towards migrants. Advice should be sought if there is uncertainty as to whether or not a person falls within the charging exemptions.

## 8. Footnotes

1. Provision of Health Services to Persons not 'Ordinarily Resident' Regulations (Northern Ireland) 2005.
2. Circular HSS(PCD)10/2000 (Departmental Guidance)
3. The term 'ordinary residence' is a common law concept interpreted by the House of Lords in *Shah v Barnet LBC* (1983) 1 All ER 226 as:

*"someone who is living lawfully in the UK voluntarily and for settled purposes as part of the regular order of their life for the time being with an identifiable purpose for their residence here which has a sufficient degree of continuity to be properly described as settled"*

4. *R (A) v West Middlesex University Hospital NHS Trust* 2008 EWHC 855.

## 9. Legislation

**Provision of Health Services to Persons not 'Ordinarily Resident' Regulations (Northern Ireland) 2005 (Statutory Rule 2005 No551) (The Regulations).** These regulations define the categories of visitors to Northern Ireland who are eligible to access health care services in Northern Ireland.

**Circular HSS (PCD) 10/2000** (The Guidance) provides Departmental guidance to the legislation and is confined to Primary Care in particular that given by GPs.

**European Community Regulation 1408/71 as amended.** This is a European regulation which provides for co-ordination of social security across EU Member States.

**EC Regulation 1612/68.** This is a European regulation which provides for freedom of movement for workers from EU member states and for freedom from discrimination.

**The European Convention on Social and Medical Assistance (ECSMA).** The UK is a signatory to this agreement whereby contracting parties undertake to ensure that nationals of the other contracting parties who are lawfully present in one of the contracting countries are entitled to access health care free of charge.

**ECHR Articles/ Human Rights Act 1998.** Section 6 places a duty on public bodies to act in a way which is compatible with the rights protected by the European Convention on Human Rights.

**Race Relations (Northern Ireland) Order 1997 (as amended)** makes it unlawful for Public authorities to discriminate on the grounds of colour, race, nationality, ethnic or national origin, in the course of carrying out any of its functions relating to health care.

*For any queries arising from this briefing, please contact the community care unit of Law Centre (NI) on the advice line (028 9024 4401) or, in individual cases, please feel free to refer a client directly.*

*Information and advice can also be obtained from the General Medical Services Branch of the Department of Health and Social Services. Tel: 028 9052 2890 or email [gmsenquiries@dhsspsni.gov.uk](mailto:gmsenquiries@dhsspsni.gov.uk)*

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## Appendix 1

### Member states of the European Union

Austria	Lithuania
Belgium	Luxembourg
Bulgaria	Malta
Cyprus (southern)	Netherlands
Czech Republic	Poland
Denmark	Portugal
Estonia	Romania
Finland	Slovak Republic
France	Slovenia
Germany	Spain
Greece	Sweden
Hungary	UK
Ireland	Iceland
Italy	Liechtenstein
Latvia	Norway

## Appendix 2

### Countries with reciprocal health care agreements with the United Kingdom

#### Nationals from the following countries:

Armenia  
Azerbaijan  
Belarus  
Georgia  
Kazakhstan  
Kyrgyzstan  
Moldova  
New Zealand  
Tajikistan  
Turkmenistan  
Russia  
Slovenia  
Uzbekistan  
Ukraine

#### Residents of:

Anguilla  
Australia  
Barbados  
Bosnia-Herzegovina  
British Virgin Islands  
Channel Is.  
Croatia  
Falkland Islands  
Gibraltar  
Iceland  
Isle of Man  
Macedonia  
Montenegro  
Montserrat  
Serbia  
St Helena  
Turks & Caicos Islands

## Appendix 3

### Diseases for the treatment of which no charge is to be made (Statutory Rule 2005 No 551 Schedule 1)

Acute encephalitis/meningitis; bacterial	Measles
Acute encephalitis/meningitis: viral	Mumps
Meningococcal septicaemia	Paratyphoid fever
Anthrax	Plague
Chickenpox	Poliomyelitis: acute
Cholera	Rabies
Diphtheria	Relapsing fever
Dysentery	Rubella
Food Poisoning	Scarlet fever
Gastro-enteritis (person under 2 years of age only)	Smallpox
Hepatitis A	Tetanus
Hepatitis B	Tuberculosis: pulmonary and non-pulmonary
Hepatitis unspecified: Viral	Typhoid fever
Legionnaire's disease	Typhus
Leptospirosis	Viral haemorrhagic fevers
Malaria	Whooping cough
	Yellow fever

#### The Community Care Legal Advice Service is funded by the four health and social services boards.

An advice line operates from the Law Centre's Belfast and Western area offices between 9.30 am and 1.00 pm daily. The telephone number for Belfast is 028 9024 4401. For Western area office telephone 028 7126 2433.

**Note:** Although every effort is made to ensure the information on these pages is accurate and up-to-date, Law Centre (NI) cannot be held liable for any inaccuracies and their consequences. The information should not be treated as a complete and authoritative statement of the law.

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