



THE JOINT COUNCIL
for THE WELFARE
OF IMMIGRANTS

A Short Guide to Access to NHS Health Care for Migrants

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For further information please contact:

Chai Patel
Legal Policy Director
Direct Line: 0207 553 7463
Email: chai.patel@jcw.org.uk

Zoe Gardner
Policy Advisor
Direct Line: 0207 553 7457
Email: zoe.gardner@jcw.org.uk



Tell us about any problems

You can report any issues you or someone you're helping encounters to us at this link:
<https://www.surveymonkey.co.uk/r/NHSCarges>.

Why is this necessary?

In 2015 the Health Secretary created new regulations to force parts of the NHS to start charging what are termed 'overseas visitors' for healthcare. These regulations ("the Charging Regulations") were amended in 2017 to expand the charging regime from mainly affecting NHS hospitals, to a wide range of community services funded by the NHS as well and also required payment up front for care in many circumstances. Now, there are many areas of the NHS where individuals may find they are asked to prove that they are eligible for free care before they receive treatment. Others may find that they are sent bills demanding treatment for care that they have received.

Because the system is difficult to understand and tied up in questions of immigration status, which is extremely complex and can vary from one day to the next, many people will find that that they are unable to get care or are being wrongly charged.

Who is this guide for?

This short guide is for anyone in England who has been refused NHS healthcare, or told that they will have to pay for it.¹ It is also for people working in frontline charities and advice services, MPs' caseworkers, volunteers, mental health advocates, or anyone else trying to help a person who's been put in that situation.

It stands alongside a more detailed toolkit ("A Toolkit for the NHS Charging Regulations"), which we have developed which can also be found on our website at www.jcwi.org.uk/Pages/Category/toolkit-and-guides. That is a far more in-depth look at the laws, regulations and guidance in this area, and provides the background to many of the concepts that we touch on in this short guide.

Seeking advice

Nothing in this guide is intended to replace legal advice from a qualified lawyer or immigration adviser. This guide is intended as a simple, easy to understand, starting point to help you with this complex system. Every individual case is different from another and we have provided a number of resources at the end to help you find more detailed guidance or advice.

Who might face problems accessing NHS health care?

Anyone. It doesn't matter what nationality you are, what race, or from what social background, you may find yourself being told that you are not entitled to free NHS care or being sent a bill for treatment received.

¹ National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238 (as amended)].



This is because the Charging Regulations which govern access to free NHS care are very complicated, and workers in NHS funded services are unlikely to be able to apply them properly in every case. Our preliminary findings from our research, which surveys workers in the health system, shows that a very large proportion do not understand the system themselves. Mistakes and misinformation are inevitable.

Those more likely to be affected

Of course, we have strong reasons to believe that some groups will be affected more than others. No hospital or clinic has the time or resources to properly check the eligibility of every single patient they encounter. Worse, as eligibility can change over time, they certainly do not have the resources to check eligibility for every patient, on each occasion.

As a result, we expect, and the information we have so far supports this, that certain groups, such as ethnic minorities, non-British non-EEA nationals, or those with foreign accents or names, will end up being targeted. They will be more likely to be asked to prove their eligibility. They will be more likely to be asked for evidence, or for more evidence than others. Moreover, after Brexit, EEA/Swiss nationals may face additional problems.

Most of all, it is the most disadvantaged in society who are likely to be vulnerable because:

- They are most likely to lack the documentation they need to prove their eligibility;
- They are more likely to have issues with advocating for themselves or knowing their own rights to free treatment or treatment in advance of payment, whether because of language barriers, other difficulties communicating, lack of social capital, lack of support networks etc.;
- If they are denied treatment they will be least able to obtain legal advice or redress, particularly given the lack of legal aid for many of these issues;
- Particularly for the elderly, those with mental health conditions, or chronic illnesses, the denial of treatment itself may make it more difficult for them to access treatment in future or to attempt to overturn an incorrect decision;
- Undocumented migrants may be deterred from further contact with the health system for fear of being reported to immigration enforcement and so may end up foregoing treatment to which they were always entitled.

How is the system supposed to work?

Ordinary Residence

The government **only** has powers to impose this sort of charging for NHS services for people who are not ordinarily resident. So, if you are ordinarily resident you shouldn't be affected at all by the Charging Regulations.

Who can and cannot be ordinarily resident?

Possibly have ordinary residence	Cannot have ordinary residence
<ul style="list-style-type: none">• British Citizens	<ul style="list-style-type: none">• Any non-EEA/Swiss national without Indefinite Leave to Enter or Remain in

<ul style="list-style-type: none"> • British Subjects with a right of abode in the UK.² • Anyone with Indefinite Leave to Remain (or Enter) the UK (generally non-EEA/Swiss citizens with a right to stay permanently in the UK). • EEA/ Swiss nationals resident in the UK under EU law.³ 	<p>the UK (and no EU treaty-based right to reside).</p> <ul style="list-style-type: none"> • Any EEA/Swiss national not resident in the UK under EU treaties (and no indefinite leave to enter or remain under UK law). • Undocumented irregular migrants.
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What does ordinary residence mean?

It's not enough just have a particular kind of nationality or immigration status. You must be:

- Living in the UK lawfully;
- Have adopted residence here voluntarily;
- The residence should be for a degree of settled purpose for the time being (this can be long or short);
- You can be resident in more than one country;
- You can be resident from the very first day of coming to the UK if you have a genuine intention to settle in the UK for the time being.

This is not a simply defined concept. But in general if you are residing in the UK (even if you also have another base outside the UK) continuously or regularly and consistently, as opposed to being here on holiday, or to see family over Christmas, then you may well be ordinarily resident.

Overseas Visitor

Anyone who is not an ordinary resident is referred to by the Charging Regulations as an overseas visitor. An overseas visitor doesn't just mean people who you would necessarily perceive or notice as being immigrants. It could be a British national living abroad, or could be someone who's lived in the UK all their life, but doesn't have a legal immigration status here. The Charging Regulations set out which overseas visitors can be charged, what kinds of care can be charged for, and also a number of exemptions or exceptions to these rules.

Services that should be free to all

Some health care services are supposed to be free for everyone, no matter whether they are ordinarily resident or not. No one should be charged or denied access to these. These are generally defined as 'primary care' services and are completely excluded from the charging regulations. While it is not against the law for them to ask you questions, this should never be related to the services they offer:

- GP services should be free for everyone living in the UK regardless of immigration status. This includes related nursing services like school nurses and health visiting. In practice many

² <https://www.gov.uk/right-of-abode/commonwealth-citizens>

³ EEA/Swiss nationals means a national of any country that is part of the European Union, the European Economic Area, or Switzerland. Whether or not they are resident in the UK according to EU law is a complex matter, and if there is any doubt they should seek advice from an immigration lawyer. We have some information on EU law residence rights here: <https://www.jcwi.org.uk/news-and-policy/a-brexite-guide-for-european-nationals>.



people face issues registering with a GP because reception staff incorrectly require proof of address or identity, but this should not happen.⁴

- ‘Walk in’ centres, which are NHS clinics, usually led by nurses, where people can come in without an appointment or registration. They are free to everyone.
- For other primary health care (like dental services, ophthalmic services (sight tests and glasses), and prescriptions) the same charges/NHS exemptions apply to everyone regardless of immigration status or ordinary residence. You should not be treated differently to anyone else even if you are not ordinarily resident.⁵ But you may be charged for these services in the same way that someone who is ordinarily resident.

There are also **some services which come under what would be called ‘secondary care’**, which are also exempt from charging, though most secondary care is not exempt.

- Accident and emergency services are not chargeable. This includes services provided at an A & E department, urgent care centre, walk-in centre, or minor injuries unit. But you can be charged for services provided after you’ve been accepted as an in-patient in a hospital or at an out-patient appointment. This means that if a person is admitted for ongoing treatment in a hospital after attending an A&E department, or given an out-patient appointment for follow up treatment, this treatment is potentially chargeable although the emergency care provided was not.
- Family planning services are exempt from charging. This includes services that supply contraceptives to prevent pregnancy. It does not include abortion services which can be charged for.
- Palliative (end of life) care services provided by the NHS by registered palliative care charities or social enterprises are exempt from charging.
- Telephone Advice Line Services

Services provided for the diagnosis and treatment of the **following specific conditions** are exempt from the charging regime⁶. This includes routine screening and vaccinations as well as other diagnostic tests even if they are found to be negative⁷. The conditions listed include the diagnosis and treatment of HIV, TB and other communicable diseases.

Acute encephalitis	Anthrax	Brucellosis
Acute poliomyelitis	Botulism	Cholera
Diphtheria	Haemolytic uraemic syndrome (HUS)	Infectious bloody diarrhoea
Enteric fever (typhoid and paratyphoid fever)	Human immunodeficiency virus (HIV)	Invasive group A streptococcal disease and scarlet fever
Food poisoning		

⁴ You can find more information about registering with a GP on the NHS Choices website: <https://www.nhs.uk/NHSEngland/AboutNHSservices/doctors/Pages/NHSGPs.aspx>

⁵ For more information on charges and exemptions see the NHS Business Services website: <https://www.nhsbsa.nhs.uk/nhs-help-health-costs>

⁶ The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238, regulation 9(d) with services listed in Schedule 1

⁷ Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>, para 4.3



Invasive meningococcal disease (meningococcal meningitis, meningococcal septicaemia and other forms of invasive disease)
Legionnaires' disease
Leprosy
Leptospirosis
Malaria
Measles

Middle East Respiratory Syndrome (MERS)
Mumps
Pandemic influenza
Plague
Rabies
Rubella
Severe Acute Respiratory Syndrome (SARS)
Smallpox



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Tetanus
Tuberculosis
Typhus
Viral haemorrhagic fever
Viral hepatitis
Whooping cough
Yellow fever.

Services provided for both the **diagnosis and treatment of sexually transmitted infections (STIs)** are also exempt from charging under the regulations⁸.

Treatment of conditions **caused by certain forms of violence** are exempt provided that you have not come to the UK specifically in order to seek that medical treatment. Whether something is or isn't caused by the violence in question may be a tricky factual question. So people should receive free treatment for physical and mental health conditions caused by:

- **Torture.** The definition of torture used is where severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by or at the instigation or acquiescence of public officials or other persons acting in an official capacity. Basically, this means that someone has been tortured, but also that this torture was carried out, or ordered, or allowed to happen by someone official.
- **Female genital mutilation (FGM).** These are services provided to a girl, woman or transgender man for the treatment of any condition caused by female genital mutilation or cutting.
- **Domestic violence.** Treatment of conditions directly attributable to domestic violence are exempt from charging.
- **Sexual violence.** Services for the treatment of any condition directly attributable to sexual violence are free of charge. This includes maternity services and mental health services that may be needed as a consequence of sexual violence.

People who should not be charged even if not ordinarily resident

Even if you are not ordinarily resident, you should not be charged for healthcare if:

- You are living in the UK under a time-limited visa and you have paid an [healthcare surcharge](#) as part of your visa application;⁹
- You are living in the UK under a time-limited visa and you are exempt from paying the immigration health surcharge. People who are exempt include:¹⁰
 - Children who are looked after by local authorities and apply for leave to remain;
 - Individuals and their dependants applying for asylum, humanitarian protection or protection under Article 3 of the European Convention on Human Rights (including applications for further leave to remain);
 - Individuals and their dependants applying for leave to remain under the Trafficking Convention or as a domestic worker who has received a positive Conclusive Grounds decision from a competent authority that they are a victim of trafficking or modern slavery;

⁸ *ibid*, regulation 9(e)

⁹ If you are exempt in this category because you paid the health surcharge, you still have to pay for assisted conception services where treatment started on or after 21 August 2017. You are exempt from all other charges under the Charging Regulations.

¹⁰ As above, you still have to pay for assisted conception services where treatment started on or after 21 August 2017.

- Individuals and their dependants applying for leave to remain under the Home Office Destitution Domestic Violence Concession following the breakdown of their relationship as a result of domestic violence;
 - Non-EEA nationals applied for entry clearance/an EEA Family Permit to come to the UK under EU legislation, for example as a family member of an EEA national resident in the UK;
 - Overseas visitors with an enforceable EU right under EU law (not just EU citizens with rights to reside) but any enforceable EU right, including under EU Regulations for co-ordinating health care among EU states and EU treaties with non-EU countries
 - The Home Office may also waive or reduce the immigration health surcharge for applicants on an individual basis.
- You are a child (under 18) and looked after by a local authority. This overlaps with the exemption to the health surcharge above but means that even a child who has not made any immigration application can be exempt from all charges.
 - You have been granted asylum, temporary protection, or humanitarian protection in the UK or you are a dependant of someone who has. If you were charged for NHS services before a grant was made, it may be possible to get a refund.
 - You have an ongoing claim for asylum, temporary protection, or humanitarian protection or are a dependant of someone who does. This includes people with ongoing appeals against a refusal of protection.
 - If you were in the UK for the purpose of seeking asylum, temporary protection, or humanitarian protection and were charged before you made your legal claim, you may be refunded as soon as you make the claim and become exempt.
 - If you have reached the end of the asylum, temporary protection, or humanitarian protection process and have been rejected with no further route to appeal that decision, then you will be chargeable.
 - Victims and suspected victims of modern slavery, including trafficking are exempt from charging when the competent authority (the Home Office for non-EEA nationals) makes either a 'reasonable grounds' decision that someone may be a victim of modern slavery, or makes a conclusive determination that an individual is a victim of modern slavery. The NHS and NHS staff are supposed to play a key role in identifying victims of modern slavery and referring them to the Home Office, but the exemption from charges only starts once the Home Office (or other competent authority) has made a decision. If you are helping someone who may be a victim of trafficking it is absolutely essential that you refer them to a specialist legal adviser in immigration (see referrals and resources section at the end of this guide).

Other groups exempt from charging:

- People deprived of their liberty under the Mental Health Act 2005 (e.g. sectioned), detained in an NHS hospital under the Mental Health Act 1983, or subject to treatment ordered by a court.
- People detained in a prison, young offender institution or under immigration legislation, as well as those released from detention who have begun a course of treatment up until that course of treatment is completed.
- Members of the regular and reserve forces, war pensioners and those receiving payments from the armed forces compensation scheme, members of NATO armed forces in certain cases, and certain Government and British Council employees and persons in similar employment.

- Nationals of countries who are party to the European Convention on Social and Medical Assistance (ECSMA), where the treatment need arose during a visit and they cannot afford to pay
- In individual circumstances where the Secretary of State determines there are exceptional humanitarian reasons, a provision that is expected to be used rarely.

Reciprocal arrangements

There are also reciprocal arrangements in place for people from the following countries: Anguilla, Australia, Bosnia, British Virgin Islands, Falkland Islands, Gibraltar, Isle of man, Israel, Jersey, Kosovo, Macedonia, Montenegro, Montserrat, New Zealand, Serbia, St Helena, Turks and Caicos Islands.

The level of health coverage provided depends on the reciprocal agreement with the particular country. The NHS charging guidance describes what is covered under each country's agreement in a table at pages 81-82¹¹.

Services that may be chargeable

If you do not fall within any of the exemptions, you can be charged for any treatment you receive from the NHS or funded by the NHS which is not excluded. Typically these include secondary health care services and include treatment in hospitals and other specialist services funded by the NHS. Since the 2017 amendment to the Charging Regulations a wider range of services funded by the NHS are required to charge for secondary health care provision including community mental health services, district nursing services and charities providing specialist services funded by the NHS.

Charging in advance of treatment or after treatment

If you are not personally exempt from charging and the service or treatment you require is not excluded or exempted from charging, there is still a question of whether you should have to pay **before** or **after** your treatment.

Decisions on whether treatment is immediately necessary or urgent must always be taken by a clinician.

Immediately necessary treatment is treatment that a patient needs promptly to:

- to save their life; or
- to prevent a condition from becoming immediately life-threatening; or
- to prevent permanent serious damage from occurring¹².

It also includes all maternity services including antenatal and postnatal services as well as assistance during the birth.

Immediately necessary treatment must always be provided without delay and irrespective of any other factors like ability or willingness to pay in future.

Urgent treatment is treatment that is not immediately necessary but cannot wait until the person can reasonably be expected to leave the UK in the view of the clinician, who may base their view on a range of factors including:

- the pain or disability a particular condition is causing;

¹¹ Department of Health, *Guidance on implementing the overseas visitor charging regulations*, December 2017 at: <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>

¹² *ibid*, para 8.4

- the risk that delay might mean a more involved or expensive medical intervention being required; or
- the likelihood of a substantial and potentially life-threatening deterioration occurring in the patient's condition if treatment is delayed until they return to their own country¹³.

When treatment is urgent the person can be asked to pay in advance, but treatment cannot be delayed or withheld if the patient won't or can't pay nor should the patient be discouraged in any way from accessing it.

Because it's very difficult to know how long a person can be reasonably expected to leave the UK, clinicians are supposed to use 6 months as a starting point. I.e. can it wait 6 months, taking into account the factors above? In these circumstances, treatment must not be delayed or withheld if a person is unable to pay.

Any unexpected change in the condition should mean that the person is reassessed.

Non-urgent treatment is treatment falling outside these categories and which will not be provided unless payment is made in advance.

Children & Care leavers

As explained above, children who are looked after by a local authority are exempt from charging, but there is no general exemption for children. They are treated in the same way as adults in terms of charging and the exemptions.

There is no exemption for young people over 18 who are care leavers. If the course of treatment started before they became 18 then that course of treatment remains exempt from charging.

However, local authorities still have duties to provide support, including financial support, to care leavers. They will have a duty to provide financial support to cover the health care costs of a young person who has left their care and cannot obtain free health care. They may refuse to do, which is a decision that could be challenged legally.

What might go wrong?

Charges, Billing & Consequences for Immigration Status

If you are subject to charges and not exempt, you'll be charged at 150% the standard cost of the treatment in question. If treatment is urgent or immediately necessary you will be invoiced for the treatment but you will be treated whether or not you can pay. Otherwise, you will have to pay up front.

If you have an outstanding debt of more than £500 to the NHS, this will make a difference to any immigration application you make while that debt is still in existence. There will be a presumption that your application should be refused, though this may be outweighed by human rights grounds or exceptional circumstances in your favour.

It is possible to agree to pay in instalments.

¹³ *ibid*, para 8.7

You will need, if at all possible, good quality legal advice and representation for assistance in presenting your application. See the resources section on referrals for immigration advice. It is a criminal offence to give immigration advice without being regulated to do so.

Cancelling Debt?

NHS bodies don't have any power to waive health care charges, but they can 'write off' debt if it wouldn't be cost-effective to pursue it. It is unclear if written off debt would still cause issues for immigration applications.

Debts can be cancelled if they should not have been incurred in the first place, because the person should have been found to be exempt.

If you were charged, but not notified beforehand that you could be, you may still be liable for the charge. However, you can complain to the Parliamentary and Health Service Ombudsman. Details of how to make a complaint are available on its website at: <https://www.ombudsman.org.uk/>.

The organisations and resources listed in our referrals section below may be able to assist if you think you have been wrongly charged.

It may also be necessary to obtain help from a debt charity or to get advice in cancelling the debt if it was wrongly applied. Again, see our resources section.

Refusal of treatment

An NHS funded body may refuse you treatment in advance of payment, and you might think that decision was wrong, because you are either ordinarily resident, exempt from charges, seeking a treatment that is exempt from charges, or that the treatment was urgent or immediately necessary.

Because of the complexity of the system, and the fact that any situation may cover a wide range of areas of law which require different sorts of specialist legal advice it is impossible give clear guidance on the kind of legal advice you might need. We do have links in the referrals sections below to resources from the Law Society on how to get access to legal advice.

However, in the first instance we would recommend attempting to seek help through one of the specialist organisations or charities that provide advice on access to healthcare listed in our referrals section below. They will be in a better position to advise you of the particular needs you may have depending on the individual facts of your case.

Discrimination

If you feel you were targeted for NHS charges because of your race, ethnicity, colour, or accent, or that assumptions were made about whether or not you were chargeable for those kinds of reason, that could amount to unlawful discrimination. This could be true even if you are in fact eligible for charging.

See the referrals section below for organisations that can assist with discrimination.

Referrals and resources

Healthcare and Health Advocacy

Doctors of the World: <https://www.doctorsoftheworld.org.uk/>

Maternity Action: <https://www.maternityaction.org.uk/>

Freedom from Torture: https://www.freedomfromtorture.org/page/make_a_referral

Helen Bamber Foundation: <http://www.helenbamber.org/referrals/>

Equalities & Discrimination

Equalities and Human Rights Commission: <https://www.equalityhumanrights.com/en>

Equality Advisory Support Service (EASS): <http://www.equalityadvisoryservice.com/app/home>

Public Law Project: <http://www.publiclawproject.org.uk/>

Immigration

Joint Council for the Welfare of Immigrants (JCWI): <http://www.jcwi.org.uk/>

Asylum Aid: <https://www.asylumaid.org.uk/get-legal-advice/>

Rights of Women: <http://rightsofwomen.org.uk/>

Coram Children's Legal Centre: <http://www.childrenslegalcentre.com/get-legal-advice/>

Human trafficking and modern slavery

This provides useful background information: Home Office and Ministry of Justice Leaflet on Support for Victims of Human Trafficking: <https://www.gov.uk/government/publications/support-for-victims-of-human-trafficking>

Anti-Trafficking Legal Unit (ATLEU): <http://atleu.org.uk/resources/>

Rights of Women: http://rightsofwomen.org.uk/wp-content/uploads/2014/09/ROW_Trafficking-A4-DIGITAL-V2.pdf

NSPCC: <https://www.nspcc.org.uk>

NSPCC Child Trafficking Advice Centre Tel: 0808 800 5000

<https://www.nspcc.org.uk/services-and-resources/childrens-services/child-trafficking-advice-centre-ctac/>

Salvation Army Modern Slavery Referral Helpline Tel: 0300 3038151

<https://www.salvationarmy.org.uk/modern-slavery>

Modern Slavery Helpline Tel: 08000 121 700 <https://www.modernslaveryhelpline.org/>

Asylum support

Asylum Support Appeals Project <http://www.asaproject.org/>

Community care and support

Project 17: <http://www.project17.org.uk/>

Just for Kids Law: <https://www.justforkidslaw.org/>

Coram Children's Legal Centre

Debt

Citizens Advice: <https://www.citizensadvice.org.uk/>

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JCWI, 115 Old Street, London, EC1V 9RT

Tel 020 7251 8708 Fax 020 7251 8707 Email: policy@jcwi.org.uk

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