asylum matters

New regulations on healthcare charging, and the impact on refugees, people seeking asylum, and other vulnerable groups

Briefing | | August 2017

The Government recently proposed to amend a set of rules, known as the 'NHS Charging Regulations', which govern how people access healthcare in England, and when they have to pay for it. New regulations were laid before Parliament on 19 July 2017. This briefing explains what changes the new regulations seek to make – with a particular focus on their impact on **refugees and people seeking asylum.**

Some people in the UK[1] are not entitled to free NHS hospital care. This includes people who are here for short-term visits, undocumented migrants, and some asylum seekers whose claims have been refused. There are already processes in place for hospitals to identify and bill patients for their care. The Government has now made new regulations extending NHS charges to community healthcare services, and placing a legal requirement for all hospital departments and all community health services to check every patient's paperwork and charge up front for healthcare; refusing non-urgent care where a patient cannot pay. These two changes are looked at in more detail below:

1) Extending charges into community services

From August 2017, healthcare charges will be introduced for services provided by all community health organisations[2] in England, except GP surgeries. Any organisation receiving NHS funding will be legally required to check every patient before they receive a service to see whether they should pay for their care and, in some circumstances, patients will be charged for accessing these services.[3]

Which NHS services are currently free for everyone?

- All GP services
- Family planning services, compulsory mental health care, and treatment for a range of communicable diseases that might pose a public health risk and treatment provided in a sexually transmitted diseases clinic
- Treatment of a physical or mental condition caused by torture, female genital mutilation, domestic violence or sexual violence when the patient has not travelled to the UK for the purpose of seeking such treatment
- Accident and Emergency services

Health services affected by extending charging

- Health Visiting
- School Nursing
- Community Midwifery
- Community Mental Health Services
- Termination of Pregnancy services
- District Nursing
- Support Groups
- Advocacy services
- Specialist services for homeless people and asylum seekers

A wide range of health services may be affected (see box above for details), including NHS organisations and, as of October, community interest companies and charities. **These services are often specifically commissioned to reach marginalised communities and individuals unlikely to seek out NHS care. The introduction of charges undermines the vital role they play in protecting public health and safeguarding children and vulnerable adults.** The

[1] The situation is different in Scotland, Wales and Northern Ireland, where devolution agreements allow for different healthcare arrangements.
[2] Community health services provide a wide range of services, and most care takes place in people's homes. Teams of nurses and therapists coordinate care, working with professions including GPs and social care. Additionally, community health provides preventative and health improvement services, often with partners from local government and the third sector. See http://www.nhsconfed.org/resources/2015/07/what-are-community-health-services
[3] For a full list of exemptions, see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639277/Guidance_to_Charging_Regulations_post_21_August_final__Master_version_.pdf

Government has made multiple commitments to carry out an assessment of the unintended consequences of extending NHS charges on vulnerable people, pregnant women and children[4], but this has not happened.

As we read the regulations, **public health services commissioned through Local Authorities, which include public mental health and drug and alcohol services, will also be affected.**

While the regulations do not alter the fact that GP services and Accident and Emergency[5] services are currently free to all, the Department of Health have indicated this may be subject to review at a later date.

2) Introduction of upfront charging

From October, every hospital department in England will be legally required to check every patient's paperwork before treating them, to see whether they are an overseas visitor or undocumented migrant and should be charged for their care. Every patient, British citizen or person under immigration control, will be asked about their residency status and will need to prove they are entitled to free NHS care. Pilots requesting all patients to provide two forms of identity prior to appointments are being carried out in 20 hospital trusts across England. The obligation to check patient paperwork applies to services exempt from charging on public health grounds, such as infectious disease departments and HIV clinics.

If a patient cannot prove that they are entitled to free care, they will receive an estimated bill for their treatment and will have to pay it in full before they receive any treatment other than that which is 'urgent' or 'immediately necessary', as defined by doctors on a case-by-case basis.

The regulations also introduce an obligation on trusts to record that a patient is not entitled to free NHS secondary care against that patient's NHS number. Both this measure, and up-front charging, were not included in Department of Health's 2016 consultation on NHS cost recovery and as such have not received public scrutiny.

These changes have been laid before parliament and will become law without debate unless there is an objection from either House.

What does this mean for refugees and people seeking asylum?

Refugees and people seeking asylum are exempt from paying for treatment. However, refused asylum seekers have different entitlements. Those in receipt of some form of statutory support (Home Office Section 4/ Section 95 support or Local Authority support) are entitled to free care. However, in England, refused asylum seekers who are not in receipt of support are currently chargeable for secondary (hospital) care, unless they started their course of treatment prior to being refused or qualify for a treatment based exemption (for example, they are HIV positive).[6] The situation is different in Scotland, Wales and Northern Ireland, where the devolved governments have seen fit to ensure refused asylum seekers can still receive healthcare for free.

Under the new regulations, refused asylum seekers would become chargeable for a range of community health services in England, and would also be subject to up-front charging for non-urgent care.

Even under the current system, it is difficult for health services to accurately identify who is chargeable under the regulations and who is exempt, particularly when the immigration status of individuals regularly changes over time. Those who are most adversely affected are often the most vulnerable, who have little understanding of their rights or ability to advocate for themselves and navigate the NHS, particularly without a translator.

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[4] Department of Health made these commitments following recommendations by Home Affairs Committee and Major Projects Authority (both in 2015) that such evaluations took place before cost recovery was extended to other areas of the NHS.

[5] However, this does not extend to inpatient care, so a patient presenting at A&E who is then admitted to hospital may be charged for the treatment they receive.

[6] For a full list of exemptions, see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639277/Guidance_to_Charging_Regulations_post_21_August_final__Master_version_.pdf

The result has been that all too often, even those who are exempt from charging - such as refugees and asylum seekers – are wrongly denied or charged for treatment, or deterred from accessing treatment altogether for fear of being charged. We are concerned that new plans to extend the charging mechanisms within the NHS will further deter people seeking refugee protection from accessing the healthcare they need.

Our key concerns about regulations to extend charging into community care settings, and introduce up-front charging are:

- ***Up-front charging and the need to present paperwork proving eligibility for free care will increase barriers to healthcare for refugees, asylum-seekers and other vulnerable groups:*** There is a risk that healthcare, including lifesaving care, may be withheld from refugees and asylum seekers who are entitled to free care because they do not have easy access to paperwork and passports to prove entitlement. Other vulnerable groups, such as victims of trafficking, homeless people, elderly people, and those living with mental health conditions are also likely to be affected.
- ***Preventing hard-to-reach communities from accessing essential services will lead to increased health inequalities:*** Any NHS funded organisation – including charities – that provides community based services such as termination of pregnancy services and community mental health services, will be legally required to check the eligibility of patients and, in some circumstances, charge patients. These services are often specifically commissioned to reach marginalised communities and individuals unlikely to seek out NHS care. The introduction of charges undermines the vital role they play in safeguarding children and vulnerable adults, and will result in increased health inequalities.
- ***The extension of charging will have dire consequences for refused asylum seekers:*** Denying healthcare doesn't make health problems go away. Due to their experiences in their country of origin, their journey to the UK, and sometimes their experience in the UK asylum system, people seeking asylum often have particular physical and mental health needs. Additionally, the poverty, homelessness and social isolation faced by many refused asylum seekers can exacerbate existing health conditions. With no permission to work in the UK, they are unlikely to have any means of paying for health services, and will be deterred from accessing even those services that are free for public health reasons due to fear of being charged at a later date, or being identified by the Home Office. Both the Welsh and Scottish governments, and Northern Irish Assembly have seen fit to exempt this group from charging.
- ***These measures will further undermine public health:*** Taken together, the extension of charging into community care services, coupled with the likelihood that public health services commissioned through Local Authorities – such as drug and alcohol services - will also be affected by the regulations, mean that access to immunisation programmes, early diagnosis of communicable diseases, and other preventative care programmes which protect us all will be undermined.
- ***All this will cost the NHS more money:*** The Government has not carried out a full and robust assessment of the impact and cost of the new charging regime. The anticipated financial saving for the NHS is small (£200,000 a year), based on little evidence and likely to be overestimated. For example, it is estimated community services face a cost of up to £13.64 per provider per year[7] to cover the retraining of staff and associated administrative costs of implementing the cost recovery programmes, but this fails to properly to take into consideration additional administrative time to check paperwork. In addition, the confusion around eligibility will result in late diagnosis and treatment amongst groups most at risk, with significant long-term costs to the NHS, particularly when considering emergency interventions undertaken after an individual's health has deteriorated and they require urgent or immediately necessary treatment.[8] A case study from Northern Ireland during the period when migrants were charged for primary and secondary healthcare illustrates this point: An asylum seeker could not get access to an inhaler for her asthma after her asylum application was rejected. She consequently became so ill that she was admitted to the Intensive Care unit at Belfast hospital in November 2012 and had to stay in hospital for five days before being discharged. In her case, the cost of a prescription would have been £12.87, while the cost of a visit to A&E by ambulance and five days in hospital was £1,508.[9]

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[7] Ben Gershlick, Zoe Firth. *Briefing: Provision of community care: who, what, how much?* The Health Foundation. April 2017.
NHS Confederation. "Key statistics on the NHS". Last updated: 14 / 7 / 2017 10 am. Retrieved 07 / 08 / 2017 from: http://www.nhsconfed.org/resources/key-statistics-on-the-nhs

[8] Research by the National Audit Office confirmed that early diagnosis and intervention provides significant long term savings (31 January 2013, HC683 Session 2012-13).

[9] Northern Ireland Law Centre, *Policy briefing: Accessing healthcare for migrant groups*, June 2013, page 5

- ***New systems to check patient eligibility will have unintended consequences:*** As ID checks are carried out on all patients in advance of appointments, and medical professionals are tasked with judging whether treatment is urgent or immediately necessary, patient waiting times are likely to increase, putting the NHS under even greater strain. There is also the risk of racial profiling being used as a means to identify chargeable patients, leading to an increase in health inequalities (a breach of the Secretary of State for Health's duty to reduce health inequalities under the Health and Social Care Act 2012). The only way to check eligibility for free NHS services which does not contravene equality law is to check everyone. Reviewing every patients' immigration status will be time consuming, costly to administer and frustrating for both patients and NHS staff. It is difficult to see how repeat eligibility checks can be avoided as service providers will have to ensure that a patient's residency status in the UK has not changed over time. In Northern Ireland, reviews were carried out every six months, but this was later judged to be unworkable and consequently carried out every 24 months. One of the problems encountered was that the Home Office often failed to confirm people's immigration status. Furthermore, these checks will place an additional administrative burden on the Home Office, to the detriment of their ability to manage the wider asylum system.

Recommendations

The regulations should be withdrawn. The government should carry out and make public the results of:

- an assessment of the impact of extending charges into community services on vulnerable groups, pregnant women and children;[10]
- an assessment of the impact of upfront charging and checking patient paperwork on access to services, health outcomes and patient waiting times, including an evaluation of the ongoing pilots taking place in hospital trusts;
- an impact assessment evidencing the proposed regulations do not breach the Secretary of State for Health's duty to reduce health inequalities under the Health and Social Care Act 2012;
- a human rights impact assessment on upfront charging;
- a public consultation on the parts of the regulations not included in the 2016 consultation on NHS cost recovery: upfront charging and recording information against NHS number (consistent identifier);
- a more robust and thorough assessment of the true costs of introducing these measures.

On the completion of the above, any regulations to extend charging into new areas of care and / or introduce upfront charges should:

- exempt all services that protect public health, including drug and alcohol services, community midwifery services, health visiting and school nursing;
- exempt all services provided by charities or community interest companies;
- exempt all community mental health services;
- exempt all abortion providers;
- exempt asylum seekers whose claims have been refused, as is the situation in Northern Ireland and Scotland;[11]
- require all decisions to withhold healthcare pending payment to be 1) subject to a second clinical opinion and (2) open to challenge by a patient
- be accompanied by Department of Health guidance for hospitals and doctors 1) outlining how to implement the regulations in a way that is not discriminatory and does not violate human rights or increase health inequalities and 2) confirming that routine identity documents checks should not be carried out in services where NHS charges do not apply, such as infectious disease services and A&E, or in maternity services.

Further Information

For further information about how the extension of charging is likely to affect refugees and people seeking asylum, or any other issues raised by this briefing, please contact Estelle Worthington at Asylum Matters:
Email: estelle@asylummatters.org | Mobile: 07557983264 or your regional Asylum Matters Campaigns Project Manager.

[11] Regulation 9, Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015