Topical briefing

Jesuit Refugee Service UK

NHS Charging Regulations

Impact on undocumented migrants, refused asylum seekers, and other vulnerable groups

December 2017

Summary

New regulations began coming in to force this summer extending charging for NHS services in England for many without permanent UK residency. Previously, charges were mostly limited to non-emergency hospital treatment, and were billed after treatment. Since August 2017, charges have been extended into community health services. Services now chargeable include community midwifery, district nursing, drug and alcohol treatment, and mental health services amongst others.

As of 23rd October 2017, payment is demanded upfront for all services included within the charging regime (i.e. hospital care and community services), and treatment for "non-urgent care" is prohibited without it. The definition of urgent care is left to physicians to determine, which means much uncertainty for patients about eligibility for access. There are also plans to begin charging overseas visitors and undocumented migrants for primary care in the near future, and to try to do so for emergency services. Furthermore, healthcare providers are now obliged to check patients' immigration status, even for many services that remain free. There are no clear guidelines on how this is to be done; in response to concerns and request for clarification, the Health Secretary's office stated that there were 'no fixed evidential requirements'.[1]

A new GMS1 form for GP registration includes supplementary questions about residency. These are *not* obligatory for registration, but government guidance does not make this clear.[2] Guidance sent to GPs in February 2017 states that the questions apply to those who "may be subject" to the regulations.

The aims of these new rules are ostensibly two-fold: to tackle so-called "health tourism" (the scale of which is highly contested) and to create additional pressure on undocumented migrants to encourage them to leave the UK as part of a range of measures loosely referred to by policy makers as the "hostile environment agenda". The latter group includes refused asylum seekers with no government support who are destitute.

These new regulations raise grave ethical concerns. They damage the relationship of trust between healthcare professionals and patients, obstructing the provision of effective care; the make it difficult to access healthcare for many they are not intended to target, and disproportionately those who are marginalised; and most fundamentally, they intentionally remove healthcare from a highly vulnerable group of people with very serious health needs – needs generated and intensified by the government's policy of rendering undocumented migrants destitute.

About JRS UK

The Jesuit Refugee Service (JRS) is an international Catholic organisation, at work in 50 countries around the world with a mission to accompany, serve and advocate on behalf of refugees and other forcibly displaced persons. JRS in the UK has a special ministry to those who find themselves destitute as a consequence of government policies

[1] The Health Secretary's office stated that "The changes do not require that a patient will need to provide a means of identification to qualify for free care. While this may be helpful in demonstrating eligibility, other information will be used by trained NHS staff to ensure the residency status of a patient is identified. The Regulations simply require that a relevant body must make such enquiries that it is satisfied are reasonable in the circumstances to determine whether charges should be made. There are no fixed evidential requirements".

[2] https://www.england.nhs.uk/publication/primary-medical-care-policy-and-guidance-manual-pgm/, at pp.144-146.

and those detained for the administration of immigration procedures. JRS UK runs a day centre, activities and hosting scheme (*At Home*) for destitute asylum seekers and detention outreach services to Heathrow IRC.

The human impact of the new changes

Each week JRS UK runs a day centre to support asylum seekers who have been made destitute by the system as a result of being barred from seeking work or claiming benefits. On Thursday mornings, these asylum seekers – who we call our refugee friends – start to arrive at the day centre for a hot meal, a chat, and a safe place to relax for a few hours. Some have slept on the streets the night before. Like everyone who is homeless, they are vulnerable – to cold and infection, to physical and sexual assault. Others have been forced into abusive relationships in order to find a place to sleep, with many more in transient housing situations that could end at a moment's notice. On any given Thursday, our staff and volunteers will speak to people who have gotten up from a friend's sofa at three in the morning to walk halfway across London and queue for hours in the dark. Why? They don't have the money for transport and need to report to the home office. If they are late this will be counted against them when they try to regularise their immigration status. Every time they report, they may be detained without charge or time limit, where it is difficult to contact friends or family. Navigating the daily challenges of destitution and the burden of uncertainty is physically exhausting and emotionally strenuous.

All of this, and much more, takes a huge physical and mental toll on health, and often compounds the effects of trauma that they have experienced in their home countries; many were already survivors of torture, FGM, or sexual assault.

New rules on charging for NHS care in England will now prevent these same people from accessing a range of healthcare services. This is partly because the rules demand that payment be provided for certain healthcare services before treatment, and destitution renders them unable to pay. It is also because doctors and nurses have been told they must now check their patients' immigration status. This scares anyone whose status is precarious, and is likely to deter those we work with from seeking medical help, even where it remains free. Disturbingly, these rules appear partly to target refused asylum seekers: they take healthcare away from vulnerable people as a means of enforcing immigration control, people whose vulnerability has been created by the system itself which has made them destitute.

At JRS UK, we are seriously alarmed by the impact that these new rules will have on those we work with. We also think that the new rules raise very serious ethical questions. The new regulations and the potential problems with them are explained below.

Damage to relationship between healthcare professionals and patients

Medical professionals have expressed concern that the requirement for health care services to check immigration status will jeopardise their relationships of trust with patients, and undermine doctor-patient confidentiality. Trust is vital if medical professionals are to provide effective care. Related to this, if physicians are forced to prioritise and act in the interests of immigration control, this will undermine their ability to prioritise and act in the best interest of their patients. There is very little clarity about how medical professionals should ascertain eligibility. The Health Secretary has said that ID checks will not be required, but it is difficult to see how healthcare providers will be able to fulfil their legal obligation to check immigration status without doing this. In the absence of a clear evidential standard, the moral responsibility for checking immigration status is rhetorically shifted onto healthcare professionals – further damaging their relationship with patients.

Lack of access to healthcare for many legally 'entitled' to it

Enforcing these regulations will require widespread checks on everyone's entitlement to access, meaning many who should be entitled to free care but who struggle to present papers may also find themselves bound up in the rules, thereby prohibited from treatment, billed retrospectively, or deterred from seeking it in the first place for fear of being charged. People likely to be affected in this way are disproportionately vulnerable, and include

those who are homeless or living in refuges, asylum seekers with pending applications, and those recently granted refugee status. There is already good evidence of healthcare providers mistakenly refusing treatment to asylum seekers with pending cases and those receiving emergency destitution support.[3] The community services to which charges have been extended include some on which these marginalised groups rely heavily, such as specialist services for homeless people and asylum seekers, and mental health services. It is difficult to see how these services will continue to function effectively whilst obliged to act as agents of border control within unclear parameters that create confusion for both medical professionals and patients. The lack of clarity around *how* entitlement will be checked also increases the risk of racial discrimination; in practice, racial profiling is likely to be used to determine whether further evidence on entitlement should be required as we have already seen when similar obligations to check immigration status were rolled out to private landlords[4]. Connectedly, if GP check eligibility for wider NHS care, this is likely to cause confusion such that some non-residents will be refused free GP care – which is supposed to remain free to all for the time being. During a debate in the House of Lords on 16th November, a government minister acknowledged the need to review the regulations' 'unintended consequences.' This presses the question of why the regulations remain in place.

A vulnerable group stripped of healthcare – whose vulnerability was created by government policy

This legislation deliberately targets undocumented migrants many of whom are destitute. The impact on them is likely to be devastating. The people we see at JRS UK often have complex physical and mental health needs, partly as a result of trauma that may have caused them to seek sanctuary in the UK in the first place, but more often caused by the impact of extended destitution and social exclusion itself. Some of those we work with, both male and female, are street homeless. All rely completely on the charity of friends and organisations like JRS UK to provide them with enough to eat and keep warm. We are very troubled by the prospect of such a vulnerable group of individuals being denied healthcare, even more so because their vulnerability is created by the asylum process itself, and is actively enforced by government policy.

Bills and immigration control will deter many from seeking even emergency healthcare

Even where treatment is not denied because the treatment is deemed by a doctor to be urgent and necessary, those we serve are likely to be deterred from seeking it knowing that they will still be billed retrospectively and will be unable to pay. Furthermore, an unpaid medical bill is a source of fear for undocumented migrants because the Home Office count such debts against applicants seeking to regularise their immigration status. New policies doubly ensure that all unpaid debts are counted against undocumented patients: as of last year, health trusts are prohibited from writing off debts, even where there is no hope of them being paid, and thus no financial benefit in pursuing them. Recent research into the impact of *hospital* charging, conducted at King's College, London, demonstrates that, over the last two years, undocumented migrants have routinely been deterred from seeking care, both by charging and by fear of being reported to the Home Office. This was especially true of antenatal care.[5] This dangerous trend is poised to get even worse now that charging has been extended to *community* health services, including midwifery, alongside fresh requirements to check entitlement.

The new rules raise grave ethical questions

The decision to remove access to healthcare from a group of vulnerable individuals in order to enforce border control raises critical ethical questions about balance and proportionality. To make an incremental advance in controlling a risk purportedly posed by undocumented migration, a heavy burden of risk is placed upon highly

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[3] http://www.independent.co.uk/news/uk/home-news/asylum-seekers-migrants-wrongly-denied-nhs-healthcare-cancer-doctors-phil-murwill-a7672686.html.

[4] The Joint Council for the Welfare of Immigrants carried out an independent evaluation of the implementation of the right to rent rules – rules which bar private landlords from renting property to those without immigration status. The JCWI report "Passport please" concluded that the rules were causing widespread discrimination against potential ethnic minority tenants, regardless of eligibility within the rules.

[5] This research found that at least two women felt pressured to consider abortion by the prospect of being billed for a hospital birth.

vulnerable people. Uncertainty about how the rules will be implemented works in a similar way. While it will no doubt create difficulty for hospitals and medical professionals to navigate, the greatest burden of the uncertainty is carried by the most vulnerable, i.e. undocumented migrants themselves.

At the same time as barring undocumented migrants from healthcare, legislation also increases their vulnerability and ultimately their need for healthcare. The new legislation is part of the "hostile environment agenda". As such, it acts in concert with measures that deepen and cement the destitution of undocumented migrants. For example, other recent legislation (the right to rent rules) also effectively bars anyone without immigration status from lodging rent free with friends or family who rent privately. This forces people into ever more transient arrangements with frequent moves, and others into exploitative relationships or onto the streets. It thus puts them at increased risk of domestic and sexual violence, as well as myriad physical and mental health problems. Government policy has created desperate health needs among undocumented migrants. At the very least, it now has a duty to address those basic needs.

At a glance…

Who has to pay? Overseas visitors from outside the EEA and undocumented migrants, including 'refused' asylum seekers without government support.[i]

What has changed? The new regulations both increase the number of NHS services that are chargeable and introduce upfront charging. For some time, NHS secondary care in hospitals in England has been chargeable for many non-residents.

On 21st August 2017, the range of services that were chargeable was extended into all community health services except GP surgeries and all affected healthcare providers were placed under obligation to check patients' immigration status.

On 1st October, questions about residency became included in GP registration forms.

On 23rd October, charging in hospitals and community health services became upfront for non-urgent care – i.e., payment is required prior to treatment. Care deemed either 'urgent' or 'immediately necessary', is charged after treatment and defined at clinicians' discretion.[ii] NHS funded community services delivered by non-NHS providers are chargeable, and the relevant providers correspondingly required to check immigration status.[iii]

At an unspecified point in the near future, on unspecified terms: Primary care other than emergency care will become chargeable. 'Subject to further consultation': *Emergency care* may become chargeable.

For more information

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[i] Exemptions include: People with pending asylum claims and their dependents; people with refused asylum claims on section 4 support or support from a local authority under Part 1 (care and support) of the Care Act 2014 or section 35 or 36 of the Social Services and Well-being (Wales) Act 2014, by the provision of accommodation. For a full list of exemptions, see 'Guidance on implementing the overseas visitor charging regulations', pp.12-15.

[ii] For 'urgent' treatment 'NHS bodies should make every effort to secure payment in the time before treatment is scheduled. However, if that proves unsuccessful, the treatment should not be delayed or withheld for the purposes of securing payment'. Department of Health, 'Making a Fair Contribution' February 2017, p.16).

[iii] Services affected by legislation effective from August and October taken together include district nursing, community mental health services, community midwifery, support groups, advocacy, and specialist services for asylum seekers and homeless people. Treatment for illnesses caused by torture, sexual violence, domestic violence or FGM are theoretically exempted (but not individuals who have survived those experiences).