JRS JESUIT REFUGEE SERVICE | UNITED KINGDOM

NHS Charging Regulations

Impact on refused asylum seekers and undocumented migrants

(updated September 2024)

Executive Summary

In England[1], people deemed non-resident have to pay for NHS hospital care and some community health services. In practice, this primarily applies to people refused asylum and others without immigration documents. For those subject to NHS Charging, care deemed 'non-urgent' must be paid for upfront, whilst care deemed 'urgent' will be retrospectively billed. Furthermore, data-sharing between NHS healthcare providers and the Home Office means that people with insecure immigration status are at risk of negative immigration consequences from accessing NHS care. In addition, on the ground there is much confusion, inconsistency, and error in the application of the Regulations. The NHS Charging Regime is a major barrier to healthcare for vulnerable migrants:

- In cases deemed non-urgent – which may still be vital - people are turned away from healthcare because they cannot pay.
- The prospect of debt and data-sharing with the Home Office deter people refused asylum, and other undocumented migrants, from seeking healthcare, including care that would not be charged upfront.
- People with precarious immigration status who are exempt from the Charging Regime face barriers to healthcare nonetheless, both because they are sometimes mistakenly charged or denied care, and because fear of being charged, and of negative immigration consequences, stops them seeking care.

NHS charging deliberately targets people refused asylum and other undocumented migrants as part of the Hostile Environment – that is, in order to make life unbearable for them in the hope they will leave the UK. Those targeted are a disproportionately vulnerable population. They 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. Furthermore, extended destitution and social exclusion itself, frequently compounded by periods in detention, has a serious negative impact on health, and interferes with the management of long-term health conditions, as recently highlighted in JRS UK's research *Destitute*

[1] These rules as discussed here are specific to England and do not operate as described in the rest of the UK. Among other things, in other parts of the UK, people refused asylum remain entitled to free NHS care.

and in Danger: people made homeless by the asylum system. The British Medical Association (BMA), together with numerous clinicians, have called for an end to the NHS Charging System.[2] The BMA has highlighted the risk posed by NHS charging both to vulnerable individuals and to public health.[3]

Recommendations

The government should abolish NHS charging. At a minimum and in the interim it must urgently:

- Exempt people who have been refused asylum and declared 'appeal rights exhausted', and anyone unable to pay, from all NHS charging.
- End data-sharing between the NHS and the Home Office for immigration purposes.
- The NHS charging regime should be immediately suspended pending a full and in-depth policy review in which the terms of reference are made public and all relevant stakeholders have the opportunity to participate.
- Care should never be withheld, from anyone, due to either immigration status or inability to pay.

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[2] BMA, "BMA view on charging overseas visitors" updated 28th June 2024.
[3] BMA Briefing, "Health Implications of the Hostile Environment", December 2021.

What the NHS Charging Regulations say

Who has to pay?

Those who are not "ordinarily resident": Overseas visitors and undocumented migrants, including people refused asylum and declared appeal rights exhausted, unless they are in receipt of Home Office support.[4] Overseas visitors routinely pay a health surcharge when arranging to come to the UK. Therefore, it is overwhelmingly refused asylum seekers and undocumented migrants who are prevented from accessing needed healthcare by these regulations. That is, NHS Charging Regulations primarily target people made both vulnerable and destitute by the asylum and immigration system, who are likely to have serious health needs and are simply unable to pay.

What is chargeable, and when is payment required in advance?

- Hospital and other secondary care that is not deemed either "urgent" or "immediately necessary" can be and is often withheld.
- Where care is given, patients then face huge bills they cannot pay. This is a particular source of fear for people with precarious immigration status because the Home Office counts unpaid bills against those trying to regularise their status.
- Charging regulations are implemented partly via data-sharing with the Home Office.[5] Therefore, they mean that people risk encountering immigration control if they access healthcare.
- In theory, a wider range of care may be deemed urgent, and therefore not withheld for migrants who are unlikely to leave the UK "for some time"[6], including undocumented migrants living in the UK long-term. However, it is unclear how this is determined, and there is clear evidence of crucial care

[4] 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, and victims of modern slavery. For a full list of exemptions, see 'Guidance on implementing the overseas visitor charging regulations', pp.12-15.

[5] "When other avenues of establishing entitlement have been exhausted, it may be necessary to establish the immigration status of a person. This might include (but is not limited to) establishing whether a failed asylum seeker has exhausted all their appeal processes and whether or not they are receiving support that would qualify them for an exemption, or cases where a relevant body comes across a person who appears to be in the country without the proper authority. Enquiries about a patient's immigration status should be sent securely via email to the Home Office's Evidence and Enquiry (EE) Unit. Evidence and Enquiry should respond to your request within five working days." Guidance on implementing the overseas visitor charging regulations" October 2019, p.107

[6] Government guidance dated 7th January 2021 states: "Urgent treatment is that which clinicians do not consider to be immediately necessary, but which nevertheless cannot wait until the person can be reasonably expected to leave the UK. This means that the longer a patient is expected to remain in the UK, the greater the range of their treatment needs that are likely to be regarded as urgent. If the person is unlikely to leave the UK for some time (which will be the case for some undocumented migrants), treatment which clinicians might otherwise consider non-urgent (e.g. certain types of elective surgery) is more likely to be considered by them as urgent."

being withheld from undocumented and refused asylum seekers who have been in the UK for years.

- GPs and accident and emergency care is not chargeable. However, if someone is admitted to hospital or referred for further treatment after attending A&E, that care is chargeable.[7]
- The community services subject to charging include some on which these marginalised groups rely heavily, such as specialist services for homeless people and asylum seekers, and mental health services.

What happens if someone incurs a debt?

Healthcare providers must report patient debt of over £500 to the Home Office, and it then counts against that person when they attempt to regularise their immigration status.

The situation of refused asylum seekers impacted by NHS Charging

People refused asylum and declared 'appeal rights exhausted' are made destitute by government policy. People waiting for a decision on their asylum claims are prohibited from working or claiming mainstream support so must rely on very basic support from the Home Office to meet their basic needs. If their asylum claim is refused and they are declared appeal rights exhausted, asylum support is also cut off and they are made destitute. Asylum seekers declared appeal rights exhausted constitute an extremely vulnerable population with complex health needs:

- Many are survivors of torture, Female Genital Mutilation (FGM), or sexual assault.
- Very few of them have stable and secure accommodation in which they are able to rest. Rough sleeping is common, with a particularly frequent pattern of couch-surfing punctuated by sporadic street homelessness. Couch-surfing entails sleeping in uncomfortable and over-crowded conditions, that are sometimes unsafe. Parents and children may be crammed into a single room.
- Most face a daily struggle to meet basic needs and are therefore at extremely high risk of malnutrition and food insecurity.[8]
- Many have also been held in immigration detention in the UK, which frequently has a significant negative impact on health.[9]

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[7] DHSC, "Guidance on Implementing the overseas visitor charging regulations" (May 2022).
[8] Sustain, JRS UK, and Life Seekers' Aid, *Food experiences of people seeking asylum in London: areas for local action* (2024), pp.15-20.
[9] For further details, see JRS UK'S report "Detained and Dehumanised: the impact of immigration detention" (June 2020), pp.16-17.

Destitution's negative impact on health as revealed in ***Destitute and in Danger:*** *people made homeless by the asylum system*

New research by JRS UK again demonstrates that destitution has a hugely negative impact on both physical and mental health on many levels. Key findings included:

- **Destitution contributed to and compounded physical health conditions,** with health markedly deteriorating over time.
- **It is very difficult to manage long-term health conditions when destitute.** People in destitution have very little to no control over when and how long they sleep, when they eat, or the food they eat. All of this constitutes a serious barrier to following medical advice. People struggled to regulate medication, having little control over when or what they ate or if they slept. Without safe and secure housing, it is also impossible to rest, and therefore very difficult to recover once ill.
- **Destitution is very detrimental to mental health**. Almost universally, respondents reported pervasive anxiety, chronic sleep deprivation, or suicidal ideation, and losing their sense of self and ability to engage with the world.

People made destitute by the asylum system are vulnerable to abuse and exploitation. They were often forced to accept a roof over their heads on whatever terms were available and, being afraid of immigration control should they approach authorities, had nowhere to turn for help if things went wrong. Around 20% of people responding to our survey said they did not feel physically safe around people they lived with, women talked about the risk of being forced into relationships they didn't want to be in, and there were indications of people living in unsafe or exploitative situations in the informal rental market.

One woman who contributed to JRS UK's research explained that she had been diagnosed with borderline diabetes. This meant she had a narrow window in which to improve her health and therefore avoid developing diabetes, which is irreversible. However, it was impossible to follow medical advice whilst destitute. "My doctor told me my diabetes is border[line] but be careful with stress [and life is very stressful]."

NHS Charging is part of the Hostile Environment

NHS charging is part of the 'Hostile Environment' – now often termed the 'Compliant Environment', and as such is intended to manufacture for people refused asylum and others without immigration documents, with the aim of making them leave the UK. That is, they are designed to remove healthcare from a group of vulnerable individuals as a means of immigration control. In targeting refused asylum seekers, who are destitute as a consequence of government policy: these rules take healthcare away from vulnerable people as a means of enforcing immigration control. Furthermore, these are people whose vulnerability has been created by the system itself. Government policy has created desperate health needs among refused asylum seekers and other undocumented migrants. At the very least, it now has a duty to address those basic needs. Instead, it actively erects barriers to healthcare for that population.

The Human Impact of NHS Charging

Denial of care due to lack of funds

People refused asylum and other destitute migrants are refused care because they cannot pay. We are aware of extremely vulnerable people being denied hospital care because they could not pay upfront. Some people simply do not attempt to access care because they know they cannot pay.

The prospect of debt and data-sharing with the Home Office deters people refused asylum, and other destitute migrants, from seeking healthcare, including care that would not be charged upfront.

Those we support are often nervous of accessing hospital care even if it is urgent for fear of incurring debt, because they are concerned that their data may be shared with the Home Office, or both. These fears are connected, because care providers are obliged to report unpaid bills of £500 or more to the Home Office, and these can then negatively impact an immigration case. People deterred from seeking healthcare in this way include pregnant women and people with serious chronic health conditions.

JRS UK's organisational experience is corroborated by a wide body of evidence demonstrating that undocumented migrants are routinely deterred from accessing medical care, including maternity and antenatal care by NHS charging rules.[10]

[10] See Rayah Feldman, "NHS Charging for Maternity Care in England: its impact on Migrant Women", *Critical Social Policy,* 41(3), 447-467, https://doi.org/10.1177/0261018320950168 (first published online September 2020), Doctors of the World, "Deterrence, delay, and distress: the impact of charging in NHS hospitals on migrants in vulnerable circumstances."

JRS UK was supporting a destitute refused asylum seeker who is subject to the Charging Regulations. She has a serious chronic illness. She had pain in her upper body and was referred to a specialist for a scan. She did not attend because she was aware she could not pay. Months later, she attended hospital for emergency treatment for abdomen pain, and was referred for a scan. She subsequently received repeated telephone calls from the NHS demanding payment, and saying they would report her to the Home Office, who would remove her, if she did not pay. She also received an invoice for several £1000s.

Barriers to healthcare for many legally 'entitled' to it

Enforcing the Regulations requires checks on everyone's entitlement to access. There is strong evidence that many who should be entitled to free care but who struggle to present papers also find themselves bound up in the rules and are thereby prohibited from treatment, billed retrospectively, or deterred from seeking it in the first place for fear of being charged. Cases of people belonging to the so-called 'Windrush' group and denied life-saving treatment are a high-profile example.[11] Others at risk of being 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 evidence of healthcare providers mistakenly refusing treatment to asylum seekers with pending cases and those receiving emergency destitution support.[12]

Urgent and immediately necessary care withheld

There is also strong evidence of NHS trusts withholding 'urgent' and 'immediately necessary' treatment to people within the charging regime and unable to pay, despite the fact that this treatment should, under the rules, not be withheld from anyone.[13]

[11] For example, Albert Thompson, a British Citizen denied cancer treatment due to exorbitant charging, https://www.bbc.co.uk/news/av/uk-43818671/windrush-row-i-was-denied-nhs-cancer-treatment
[12]http://www.independent.co.uk/news/uk/home-news/asylum-seekers-migrants-wrongly-denied-nhs-healthcare-cancer-doctors-phil-murwill-a7672686.html.
[13] This was a key finding of Doctors of the World, in their report "Delays and Destitution: an audit of Doctors of the World's hospital access project (July 2018-20)" (October 2020).

JRS UK was supporting a pregnant woman with an outstanding protection-based claim, on account of which she was entitled to free NHS care. However, she received a letter saying she was chargeable for maternity care. She was very worried, did not attend some appointments due to fear of being charged, including a post-natal appointment. The experience was extremely traumatic for her: "[It was] very stressful. You are worried, you need to pay, I was crying a lot." This case shows both how the regulations create barriers even for people legally entitled to free care, and how charging can prevent people from accessing urgent care, even if payment is not demanded upfront.

Damage to relationship between healthcare professionals and patients

"There was a day when I received a letter from the GP about an appointment. I had also received a letter from immigration enforcement saying they were reviewing my case. I was worried the appointment was a trap".[14]

People with insecure immigration status feel profound fear and mistrust of healthcare professionals on account of data-sharing between the NHS and Home Office. Requiring health care services to check immigration status jeopardises their relationships of trust with patients, and undermines doctor-patient confidentiality. Trust is vital if medical professionals are to provide effective care. Related to this, forcing physicians to prioritise and act in the interests of immigration control undermines their ability to prioritise and act in the best interest of their patients.

Accordingly, the BMA states: *"It is our strong and longstanding view that doctors should not have a role in assessing patients' immigration status or eligibility for free NHS care. The policy of charging some migrants for NHS care puts doctors in a difficult position and takes vital clinical time away from caring for their patients. We believe that the single role of doctors is to care for the patients in front of them, and that their clinical judgement must take precedence over any other considerations."[15]*

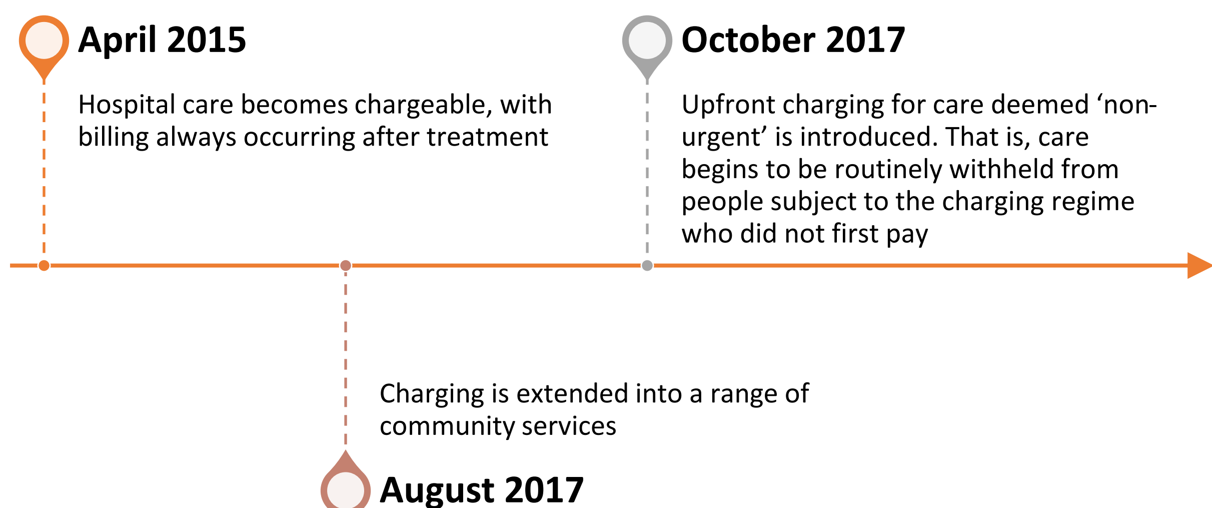
[14] *Peter*, a refused asylum seeker supported by JRS UK.
[15] BMA, "BMA view on charging overseas visitors" updated 28th June 2024.

Data sharing between the NHS and the Home Office:

- Department of Health Guidance on implementing the charging regulations advises contacting the Home Office to establish someone's immigration status if unable to establish entitlement.
- Care providers are **obliged** to report debts of £500 and over to the Home Office.
- The GMS1 form for GP registration includes supplementary questions about residency. These are *not* obligatory for registration, but government guidance does not make this clear. Guidance sent to GPs states that the questions apply to those who "may be subject" to the regulations.
- A memorandum of understanding enshrining data sharing between NHS Digital and the Home Office for immigration purposes came into force in November 2016. However, following legal challenge, the government partially paused the sharing in May 2018, and abandoned it in November 2018. The discontinuation of this memorandum does not prevent data-sharing between the NHS and the Home Office via other avenues.

Timeline of NHS charging

- Hospital care became chargeable in April 2015, with billing always occurring after treatment.
- In August 2017, charging was extended into a range of community services.
- In October 2017, upfront charging for care deemed "non-urgent" was introduced. That is, care began to be routinely withheld from people subject to the charging regime who did not first pay.



Conclusion

The NHS Charging Regulations constitute a serious barrier to healthcare for people refused asylum – a vulnerable person that is simply unable to pay for healthcare, and likewise to other destitute migrants. The connected practice of data-sharing between the NHS and the Home Office also acts as a significant deterrent to accessing NHS care and undermines trust between healthcare professionals and patients. The Charging Regulations thus pose a serious risk to both individual and public health. Furthermore, they intentionally deny healthcare to a group of people who are made especially vulnerable, and in need of healthcare, by government policy. This is doubly unethical.

About JRS UK

The Jesuit Refugee Service (JRS) supports refugees and forcibly displaced people in 50 countries worldwide. JRS in the UK specifically supports people refused asylum and made destitute, and those in immigration detention. JRS UK runs a drop in, legal advice service, activities and accommodation project for destitute asylum seekers, detention outreach services to Heathrow IRC, and a post-detention support project.

For more information

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