

April 2006

GPC

General Practitioners
Committee

Overseas visitors - who is eligible for NHS treatment?

Guidance for GPs

BMA 

Overseas visitors – who is eligible for NHS treatment?

There is considerable confusion about overseas visitors' eligibility for NHS primary medical services; this is largely because of lack of clarity in the NHS regulations. The Department of Health launched a consultation on overseas visitors to England in 2004 '*Proposals to Exclude Overseas Visitors from Eligibility to Free NHS Primary Medical Services*' but no action has yet been taken in relation to it and GPs are still awaiting updated guidance from the Department. Until the consultation exercise results in an updated health service circular, the Department of Health has confirmed that Health Service Circular (HSC) 1999/018¹ should be adhered to. The GPC finds the uncertainty unsatisfactory and would welcome clear, non-discriminatory guidance for primary medical services contractors.

NHS eligibility

Past or present payment of UK taxes or National Insurance contributions are not taken into account when establishing eligibility to receive free NHS treatment. NHS eligibility relates to being 'ordinarily resident' in the United Kingdom. Overseas visitors are defined as persons of any nationality, including British nationals, not ordinarily resident in the UK.

The courts have decided that a person is regarded as 'ordinarily resident' in the UK if he or she is lawfully living in the UK voluntarily and for a settled purpose. Ordinarily resident is a common law concept considered by the House of Lords in 1982 (the case being considered was in the context of the Education Acts, although the Lords' interpretation is generally accepted as having a wider application).

Anybody who is in the UK for 'a settled purpose' will normally be considered to be 'ordinarily resident'; in practice, following court cases, this means anyone who is in the UK for a period of six months or more. Special regulations apply to EEA residents and visitors from bilateral healthcare agreement countries.

Patients stating they are temporary visitors to the UK

As NHS contractors, GPs have a duty to provide **immediately necessary** treatment to any patient within their practice area regardless of whether or not that patient is otherwise entitled to NHS care. GPs are entitled to use their clinical judgement to determine what constitutes immediately necessary care. This is likely to include immediately necessary treatment that is required to treat not only new conditions but also pre-existing conditions that have become exacerbated during the period of a person's stay in the UK, as well as prescriptions for medication without which the patient's symptoms may become exacerbated.

At present, in theory, GPs can use their discretion regarding the treatment of overseas patients. They can register overseas visitors as temporary residents or, if they are in the UK for over three months, may accept them onto their lists. Once a person is accepted onto a practice's list they are entitled to receive free NHS primary medical services (but not necessarily other NHS services²) free of charge (like all NHS patients they may still be

¹ www.dh.gov.uk/assetRoot/04/01/19/15/04011915.pdf

² The Regulations concerning entitlement to NHS hospital treatment in England are: The National Health Service (Charges for Overseas Visitors) Regulations, as amended. Section 21 enables overseas visitors (i.e. not ordinarily resident) to be charged for NHS treatment. At present, these regulations are only used in relation to hospital services. A full list of exemptions from charges for hospital treatment is contained in Appendix 1.

subject to prescription charges and may still be subject to hospital charges). In practice therefore the current regulations mean that practices have the discretion to offer NHS treatment to most people, whether or not they are overseas visitors. A person who is not automatically eligible for NHS care and who has not been accepted onto a GP practice list or accepted as a temporary resident can still be treated by a GP but on a private basis, for which they may be charged.

Residents of European Economic Area (EEA) countries and their entitlement to treatment

The regulations relating to the European Health Insurance card³, which was introduced on 1 July 2004, state that 'EU residents who are temporarily visiting another member state are entitled to receive any necessary treatment which their state of health requires during their stay, on the same terms as a resident of the country being visited. This includes on-going medical care for pre-existing conditions i.e. medication, blood tests and injections.' This is in line with HSC 1999/018 that states 'when overseas visitors (i.e. those not ordinarily resident in the UK) require the provision of emergency or immediately necessary medical treatment, they should be offered this free of charge'. GPs remain entitled to charge for treatment that is not immediately necessary.

All people insured under, or covered by, a social security system of a member state and who are eligible for care in that member state are entitled to be issued with the European Health Insurance Card. It should be used by those staying temporarily, not permanently, in another member state. The card only relates to necessary care, such as breaking a leg, developing a chest infection or on-going care for a serious medical condition. It will not cover someone who decides to have treatment for a condition in another member state and does not confer any extra rights above and beyond the old E111.

EEA countries now include: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Republic of Ireland, Slovakia, Slovenia, Spain, Sweden plus Iceland, Liechtenstein and Norway. Switzerland is also included by special arrangement.

Bilateral healthcare agreements

Bilateral healthcare agreements have more significance for hospital treatment than for primary medical care. However, in theory, as with all overseas patients, GPs currently have discretion to accept patients from a country with a bilateral healthcare agreement as a temporary resident or include them on their list should they choose to do so. Equally, other than for emergency or immediate necessary treatment, they can offer to treat a patient privately on a fee-paying basis. Countries which have some form of a bilateral healthcare agreement with the UK are: Armenia, Azerbaijan, Belarus, Bosnia, Bulgaria, Croatia, Georgia, Gibraltar, Yugoslavia i.e. Serbia & Montenegro, Kazakhstan, Kirgizstan, Macedonia, Moldova, New Zealand, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and residents of the following countries: Anguilla, Australia, Barbados, British Virgin Islands, Channel Islands, Falkland Islands, Iceland, Isle of Man, Montserrat, St. Helena, Turks and Caicos Islands.

Visits specifically for medical treatment

Any visitor who attends specifically for medical treatment is not normally entitled to NHS services, although, under certain circumstances, particularly relating to EEA countries, eligibility may exist.

³ <http://europa.eu.int/scadplus/leg/en/cha/c10123.htm>

The European Health Insurance Card does not cover someone who decides to have treatment for a condition in another member state. Planned treatment will only be provided with the agreement of the person's insuring institution or national social security administration. A person who has emigrated from the UK would not normally be entitled to receive treatment that is neither an emergency nor immediately necessary, based on the fact that they are not ordinarily resident.

Patients stating they plan to reside in the UK

Registering overseas visitors

Practices should manage an application for registration from an overseas visitor who is in the area for a period of more than six months in the same way as any other applicant. The practice may accept the patient as an NHS patient but, if unwilling to do so, must give reasons that are not related to any form of discrimination. A practice may decline to accept the person as an NHS patient, inform them of their eligibility to NHS services and treat the patient privately. Dependents who accompany those who are working or are students in the UK for more than six months are entitled to NHS services based on the eligibility of the student/worker.

Practice staff can seek to determine a person's eligibility to free NHS primary medical services. A practice may reasonably ask for evidence of duration of stay and students should normally be able to produce a document from their institution. Passports and visas may help with identification but any reference to ineligibility to public funds does not include the NHS.

Appendix 1 - Full list of exemptions from charges for hospital treatment

The following exemptions from charges apply to hospital treatment.

Services for which a charge cannot be levied

- Services provided in an Accident and Emergency department, unless and until the patient is admitted as an in-patient or registered at an out-patient clinic
- services provided at a walk-in centre providing services similar to those of an accident and emergency department of a hospital
- treatment of certain specified illnesses on public health grounds, e.g. notifiable diseases and those to which specific public health enactments apply
- services provided otherwise than at, or by staff employed to work at, or under the direction of a hospital
- family planning services
- treatment at a sexually transmitted disease clinic, but in the case of HIV, only in relation to diagnostic testing and associated counselling
- compulsory treatment under the terms of the Mental Health Act 1983, or psychiatric treatment included by the Court as part of a probation order under the terms of the Powers of the Criminal Courts Act 1973.

Categories of patient who are fully exempt

In all cases, these exemptions extend to the spouse and school age children of an exempt person if they are living in the UK with the exempt person on a permanent basis.

- people who are in the UK:
 - for the purposes of employment and where the employer's principal place of business is in the UK or is registered in the UK as a branch of an overseas company; or self employment where the employment is in the UK
 - to be a volunteer providing services similar to health or social services
 - pursuing a full time course of study of not less than 6 months in duration or pursuing a course of study of any duration that is substantially funded by HM Government
 - to take up permanent residence
- people who have been living lawfully in the UK for 12 months immediately before requiring treatment (even if they have previously been charged for part of the same continuing course of treatment)
- refugees and formal asylum seekers whose applications have not yet been determined
- people working on ships registered in the UK
- people who receive UK war pensions
- diplomats working in UK embassies
- members of HM armed forces
- people working abroad for the UK civil service who were recruited in the UK
- people working abroad for the British Council or the Commonwealth War Graves Commission who were recruited in the UK
- people working abroad whose post is financed in part by the UK Government in agreement with another government or public body
- people who have lived lawfully for 10 continuous years in the UK but who are now working abroad and have not been away for more than 5 years
- people who work abroad in another EEA country (or Switzerland) who pay compulsory (not voluntary) National Insurance contributions in the UK
- "insured" nationals of other EEA member states (or Switzerland) who have been referred to the UK for specific treatment; plus, non-EEA nationals who are legally resident in a European Union (EU) member state (except Denmark). They must have

a form E112 issued by the state health authority in their 'home' country that covers (or insures) them for healthcare

- prisoners and those detained under immigration laws
- nationals of certain non-EEA countries with which the UK holds bilateral (or reciprocal)

health agreements and which allows referrals to the UK to receive specific treatment with the agreement of their 'home' country. They will have formal documentation to cover them for their treatment

- nationals of countries that are signatories of the European Social Charter who are genuinely without the money to pay for any necessary treatment
- UK state pensioners living not less than 6 months in the UK and not more than 6 months in another EEA Member State and who are not registered as resident in another EEA Member State
- a person who is serving with the armed forces of a country which is part of NATO but only where treatment cannot be readily provided by either his or her own medical service or the UK armed forces medical service.

Categories of patient exempt from charges for treatment the need for which arose during their visit to the UK

- nationals, or refugees, or stateless persons and their family members resident in EEA member states and Switzerland; plus, non-EEA nationals who are legally resident and insured in an EU member state (except Denmark)
- UK state pensioners who have either lived lawfully in the UK for 10 continuous years or have been employed by the UK government for 10 continuous years at some point, or their spouse or school-age children
- people from non-EEA countries with which we hold bilateral (or reciprocal) health care

agreements

- people who are without sufficient resources to pay the charge and who are nationals of a country which is a contracting party to the European Convention on Social and Medical Assistance 1954
- people who have lived lawfully for 10 continuous years in the UK but who are now living in an EEA member state or Switzerland, or a non-EEA country (other than Israel) with which we have a bilateral (or reciprocal) health care agreement, and their spouse and school-age children
- an authorised companion (which need not be spouse) of an individual who has been designated exempt by Secretary of State on exceptional humanitarian grounds.

New regulation to exempt an individual on exceptional humanitarian grounds

The Secretary of State can designate an individual exempt from charges on exceptional humanitarian grounds as long as certain criteria are met.

APPENDIX 2 - Asylum seekers and access to primary health care

Refugees and asylum seekers waiting to hear the result of their application to remain in the country are considered ordinarily resident and are therefore entitled to receive full NHS treatment. Many asylum seekers may offer to show their Immigration Service issued Application Registration Card (ARC) to give proof of their status.

Health Service Circular HSC 1999/018 states that 'eligibility to receive free medical care should relate to whether a person is ordinarily resident in the United Kingdom'. This is unlikely to apply to failed asylum seekers and if asylum seekers lose their claim to asylum and all appeal processes have been exhausted, they become ineligible for routine NHS primary care treatment from the date their asylum claim has failed (though in these cases GPs may not be aware that a patient's eligibility has come to an end until they are deported). Similarly, hospital treatments and any courses of treatments for new ailments after receiving a final decision on an asylum application will be charged for. Hospital treatments and any course of treatment already underway will be charged for if the patient has been in the UK for less than 12 months but will not be charged for if the patient has been in the UK for more than 12 months.

Although failed asylum seekers are not eligible for routine NHS primary care treatment, current regulations, as noted above, do leave it to GPs' discretion to decide whether or not to accept overseas visitors onto their lists for NHS treatment. LMC Conference policy⁴ is that such failed asylum seekers should continue to be eligible for NHS treatment. As HSC 1999/018 says:

'When an overseas visitor from any country requests non-emergency treatment or treatment that is not immediately necessary, it is for the GP to decide whether to accept that person onto his or her list for NHS treatment. If the GP wishes to accept the overseas visitor onto his or her list, he or she may treat the visitor as either a fully-registered patient or as a temporary resident. Either way, if the GP accepts the patient onto his or her list, the normal terms of service will apply and therefore the GP has to provide that treatment free of charge to the patient (except for special cases where the GPs' terms of service or the PMS pilot scheme's contract specifically allow the GP to charge or accept a fee). If the patient is accepted onto the GP's list, prescription charges are applicable under the usual rules.'

(www.dh.gov.uk/PublicationsAndStatistics/LettersAndCirculars/HealthServiceCirculars/HealthServiceCircularsArticle/fs/en?CONTENT_ID=4004148&chk=LWIRqS>.)

Although a practice may charge the individual concerned as a private patient (with the patient's consent) for any treatment which it provides unless the treatment is an emergency or immediately necessary, GPs are entitled to use their discretion to offer NHS primary medical services. In situations where treatment is not being offered under the NHS, and the patient is unable to pay privately (as may be the case with failed asylum seekers), GPs may wish to refer the patient to an organisation such as The Refugee Council or North of England Refugee Service (www.refugeecouncil.org.uk/contact/index.htm) which may know if there are any other services available in the area. [It is important to note that the Refugee Council has limited resources and does not employ doctors.]

⁴ 2004/82 That conference notes with concern the Department of Health's proposals to change the rules on eligibility of overseas visitors to NHS treatment and their proposed new system of administration. In particular conference opposes proposals to:

- (i) deny failed asylum seekers free primary medical services
- (ii) make practices responsible for the collection of any NHS charges
- (iii) remove the current discretion practices have to provide free NHS primary services to overseas visitors