

## **OVERSEAS VISITORS – WHO DO YOU TREAT?**

There has been considerable confusion about the eligibility of overseas visitors to NHS care. This is not helped by the lack of clarity in the NHS regulations which apply in general practice. The current Department of Health website on overseas visitors has not been recently updated and many of you will be aware that there was a consultation last year *Proposals to Exclude Overseas Visitors from Eligibility to Free NHS Primary Medical Services* but no action has yet been taken in relation to it. However, it is our understanding that the Department of Health intends to issue guidance specifically for GPs on this issue later in the year.

### **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. The GPC understand Immediately Necessary Care to mean something that demands immediate treatment (ie: chest pain that might indicate a heart attack) not something where the patient is just inconvenienced or forgot their medication and wants a prescription. That would be something they could pay for. Although when a GP has decided there is no requirement to provide immediately necessary treatment under the NHS there is currently nothing to prevent the practice accepting any patient for any treatment.

### **Residents of EEA countries and their entitlement to treatment**

From 1 July 2004 visitors from EEA countries became entitled to the same services as any local resident irrespective of the duration of stay. This is as a result of EU law which supersedes national law and no GP surgery is exempt from this. 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**

A practice can accept patients from a country with a bilateral healthcare agreement as a temporary resident or include them on their list should they choose to. Equally, other than for emergency or immediate necessary treatment, they can offer to treat a patient on a private, 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.

### **Patients stating they plan to reside in the UK**

#### **NHS eligibility**

NHS eligibility relates to being 'ordinarily resident' in the United Kingdom. There is no formal definition of 'ordinarily resident' however 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 here for a period of six months or more. Special regulations apply to EEA residents and visitors from bilateral healthcare agreement countries as discussed above.

**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 which are not related to any form of discrimination. A practice may, of course, 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.

**Verification**

A practice may reasonably ask for evidence of duration of stay, students should normally be able to produce a document from their institution. Passports and visas may help with identification but any reference to no eligibility to public funds does not include the NHS.

**Other sources of advice**

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) then you may wish to refer the patient to an organisation such as The Refugee Council. (<http://www.refugeecouncil.org.uk/contact/index.htm>) who may know if there are any other services available in the area.

GPs may also wish to bear in mind the resolution passed at the LMC Conference in 2004 which opposed proposals to deny failed asylum seekers free primary medical services.

**Legislation**

The Regulations concerning entitlement to NHS hospital treatment in England are: The National Health Service (Charges for Overseas Visitors) Regulations, Statutory Instrument 1989 no.306 as amended: amending Instruments are SI 1991/438, SI 1994/1535, SI 2000/602, SI 2000/909 and SI 2004/614.

From: Department of Health consultation *Proposals to Exclude Overseas Visitors from Eligibility to Free NHS Primary Medical Services* May 2004. This information is currently correct.

## **Annex A**

### **NHS Primary Medical Services – an Explanation of the Current Rules**

1 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 in the case of *R v Barnet LBC ex parte Shah*. Although the case being considered was concerned with the meaning of ordinarily resident in the context of the Education Acts, the Lords’ interpretation is generally recognised as having a wider application. It should therefore be taken into account when deciding if a person is ordinarily resident for the purposes of the National Health Service Act 1977 and the National Health Service (Charges to Overseas Visitors) Regulations 1989.

8. Past or present payments of UK taxes or National Insurance contributions are not taken into account when establishing eligibility to receive free NHS treatment.

9. Practices may accept onto their list of patients anyone who applies. Practices may also refuse to accept people as patients. Under the arrangements applying from 1 April 2004, practices can only refuse an application to join its list if it has reasonable grounds for doing so which do not relate to the applicant’s race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition. As the regulations stand this means that a practice has the discretion to offer NHS treatment to all people – UK residents and overseas visitors from any country.

10. A person may apply to register with a practice as a permanent patient or be accepted as a temporary resident. Regulations specify that a person is a temporary resident if they live in an area for more than 24 hours but not more than 3 months. A person who is accepted onto a practice’s list of patients is entitled to free NHS primary medical services. This does not automatically entitle an individual to receive other NHS services free of charge. Anyone who is entitled to receive free NHS primary medical services might also be subject to statutory charges such as prescription or dental charges. Equally, being registered with a practice does not mean that an overseas visitor is automatically entitled to free hospital treatment, even if they are referred to hospital by their GP (see para 24 below).

11. A person who has not been accepted onto a GP practice list or accepted as a temporary resident can still be treated by a GP practice but on a private basis, for which they would be charged.

### **Asylum Seekers**

12. Asylum seekers and refugees given leave to remain in the UK, or who are awaiting the results of an application to remain or an appeal, are entitled to register with a GP practice and receive free NHS primary medical services.

13. There is currently no obligation for any person to produce documentary evidence of identity, or for practices to ask for it. But the *Caring for Dispersed Asylum Seeker Resource Pack* produced by the Department of Health and the Refugee Council says that it can help the process of registration if documents can be provided. Many asylum seekers offer to show their Immigration Service issued Application Registration Card (ARC) to give proof of their status.

14. If an asylum seeker loses 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 failed. A practice will therefore charge the individual concerned as a private patient (with the patient’s consent) for any treatment, which it provides, unless the treatment is emergency or immediately necessary.

Similarly a NHS Walk in Centre will operate NHS charges.

15. Practices also routinely ask prospective patients for proof of address to confirm their residence in the practice area rather than UK residency.

## **Emergency or immediately necessary treatment**

16. Under the new GMS contract or PMS agreement, a practice is required to offer free NHS treatment to anyone who requests it, if, in the opinion of a clinician, it is immediately necessary. This is essential treatment, which in the clinical judgement of a health care professional cannot be delayed or avoided.

17. A practice is also required to offer free of charge emergency or immediately necessary treatment to a person who:

- has been refused acceptance for inclusion on the practice's list of patients for up to 14 days from the date of refusal or until registered elsewhere – whichever is sooner;
- the practice has refused to accept as a temporary resident for up to 14 days from the date of refusal or until accepted elsewhere – whichever is sooner; or
- is in an area for less than 24 hours for up to 24 hours.

18. A patient may require necessary drugs and dressings following immediately necessary treatment. These are supplied and prescribed in the same way as for UK residents. Prescription charges might also be applicable.

19. Immediately necessary treatment will also include treatment that, in the clinical judgement of a health care professional, is required to treat a pre-existing condition that has become exacerbated during the period of a person's stay in the UK.

## **Temporary visitors from European Economic Area (EEA) member states**

20. Visitors from EEA member states or Switzerland are entitled to "all necessary" care, including for preexisting chronic conditions. Currently they are not *required* by the UK government to carry with them any of the EU forms, which demonstrate this entitlement. A passport or a document such as a national ID card are acceptable as proof of entitlement. However, EEA or Swiss visitors may produce the following forms which should also be accepted as proof of entitlement:

- E111 – proof of entitlement to all necessary care. The exception is treatment for which the patient has travelled to the UK specifically to receive. Some international transport workers such as truck drivers may also have the similar E110;
- E112 – entitlement to treatment which the patient has come to the UK specifically to receive e.g. an organ transplant;
- E119 – similar to E111 but held by jobseekers; and
- E128 – issued to posted workers and some students. Entitled to all necessary treatment.

21. The UK also has a bilateral health agreement with a number of non-EEA states. They are listed in DH leaflet "Health Advice for Travellers" available from Post Offices or at [www.dh.gov.uk/travellers](http://www.dh.gov.uk/travellers). These entitle their nationals or residents to immediately necessary treatment. A passport or residence document demonstrates entitlement.

## **Walk-in Centres**

22. From 1 April 2004, treatment received in NHS Walk-in-Centres associated with A&E departments is provided free to all who seek treatment. Other NHS Walk-in-Centres apply NHS charges to overseas visitors who are not eligible for free NHS hospital treatment.

## **Persons leaving the UK for more than 3 months**

23. Persons who have left the UK, or who are intending to leave the UK for more than 3 months are not normally allowed to continue to be registered with a practice.

## **Referrals to hospitals**

24. GPs may refer an overseas visitor to hospital for further treatment. However, being registered with a practice does not give a person automatic entitlement to free NHS hospital treatment. Hospitals must establish whether a patient is ordinarily resident in the UK. Where a person is not ordinarily resident or not covered by one of the statutory exemptions listed in the National Health Service (Charges to Overseas Visitors) Regulations 1989 as amended (as listed at Annex B), then they are liable to be charged for that treatment.

## **Annex B**

### **Full list of exemptions from Charges for 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 who 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.