

NAVIGATING NHS CHARGING IN SECONDARY CARE

A guide for NHS clinicians in England, based on Department of Health and Social Care guidance¹

This guide supports NHS doctors to ensure that their patients' human rights are protected while in their care. The right to health is protected by various international instruments ratified by the UK. Ensuring that patients access urgent treatment is

also crucial to upholding their rights to life and freedom from inhumane or degrading treatment (Human Rights Act 1998, art. 2, 3). These legal protections apply to everyone, no matter what their immigration status, and bind all UK public authorities.

A PATIENT IS IDENTIFIED AS INELIGIBLE FOR FREE TREATMENT WHEN ACCESSING AN NHS SERVICE TO WHICH CHARGES APPLY

Some secondary care services, like A&E, are exempt from charges. See DHSC guidance for the full list.

Do any patient group exemptions apply? See Box A

NO

YES

Is the patient's treatment URGENT or IMMEDIATELY NECESSARY? See Box B

Clinician completes *Clinician Patient Assessment Form* to record classification of urgency

NO

YES

Provider charges the full estimated costs of treatment upfront and does not begin treatment until this is received.

Provider should write to patient and their GP, explaining the decision to withhold care and the channels available to challenge the decision. The provider should reassess if their assumed date of return passes or condition worsens.

Treatment should not be prevented or delayed, even if the patient cannot pay.

Provider will issue a bill for the cost of treatment. If the patient will struggle to repay their debt, provider should offer to set up a manageable repayment plan and signpost them to a debt advice service.

Inform the Overseas Visitors Manager of the exemption so that the patient is not charged and/or is refunded in full.

The following patients are exempt from charges:

- Refugees, asylum seekers, & their dependents;
- Refused asylum seekers receiving section 95 support, section 4 support or support under the Care Act;
- Children looked after by a local authority;
- Victims, & suspected victims, of modern slavery;
- Survivors of torture, FGM, domestic or sexual violence (for treatment needed as a result of their experience of violence);
- Those receiving treatment under the Mental Health Act;
- Prisoners and those held in immigration detention.

BOX A: PATIENT GROUP EXEMPTIONS

BOX B: DEFINITIONS

'Urgent' care is care that cannot wait until they can leave the UK.*

- Should take into account pain, disability, and the risk of the delay exacerbating their condition.
- For undocumented migrants, assume they may not be able to return within 6 months.

'Immediately necessary' care is care that:

- is life saving;
- will prevent a condition becoming life-threatening or;
- will prevent permanent serious damage.

*See page 2

¹ Department of Health and Social Care. 2017. Guidance on overseas visitors hospital charging regulations. <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>

WHEN IS MY PATIENT LIKELY TO RETURN HOME?

You are being asked to decide if care is, or will become, urgent in the time before a patient returns home. This means that a condition that may not be urgent for a person

who is likely to leave the UK within the next couple of months, **may be considered urgent** for a patient who is **not likely to leave** in the next 6 months.

What does the guidance say?

“ For undocumented migrant patients, including failed asylum seekers, the likely date of return may be unclear, and will have to be assessed on a case-by-case basis, including their ability to return home. Some may be prevented by travel or entry clearance restrictions in their country of origin, or by other conditions beyond their control.

For some cases relating to undocumented migrants, it will be particularly difficult to estimate their return date. Relevant bodies may wish to estimate that such patients will remain in the UK initially for 6 months, and the clinician can then consider if treatment can or cannot wait for six months, bearing in mind the definitions of urgent and non-urgent treatment given above. However, there may be circumstances when the patient is likely to remain in the UK longer than six months, in which case a longer estimate of return can be used. ”

DHSC. 2017. Guidance on implementing the overseas visitor charging regulations.

For some patients it will be easy to know when they will return home. However, in the case of **UNDOCUMENTED MIGRANTS** and **REFUSED ASYLUM SEEKERS (RAS)** it is more difficult.

UNDOCUMENTED MIGRANTS

There are many reasons why a patient may find themselves undocumented. This group includes domestic workers, survivors of trafficking and modern slavery and people who have not received support to make an asylum claim. They may owe debts to their employer or be unable to return home.

When making decisions about the care of undocumented migrants, it is worth considering how long the patient has been living in the UK.

REFUSED ASYLUM SEEKERS

RAS can live in the UK for years without being returned. This can be because it is not safe for them to return, their home country will not accept them or the Home Office does not take steps to deport them.

When making decisions about the care of RAS it is worth considering how long the patient has already lived in the UK without being returned.

Regardless of a patient's immigration status, ensure that the date of return used is based on a conversation with the patient and takes account of all the information they're able to provide. Record the date of return used in the Clinician Patient Assessment Form.

