



SAFE SURGERIES



Safe Surgeries Peer-to-Peer Training

Understanding migrant rights to NHS care:
Secondary Care focus

Doctors of the World UK, *part of the Médecins du Monde network*



Aims

1. Understand what is meant by: refugee, asylum seeker and undocumented migrant;
2. Understand entitlement to NHS care in England;
3. Be aware of the barriers faced by migrants in accessing NHS care;
4. Have an awareness of good practice to improve access to NHS care;
5. Be able to talk about why access to healthcare for migrants (and everyone) is important.



Doctors of the World UK

Providing healthcare and advocacy: DOTW [clinic](#)

- Primary care clinic in East London for people with difficulty accessing mainstream NHS;
- Staffed by volunteer GPs, nurses & support workers;
- Advocacy service for GP registration and secondary care ->
- Influencing health policy and practice.

Over 1,000 patients are supported by the DOTW clinic and advice line each year

Most are undocumented migrants and asylum seekers

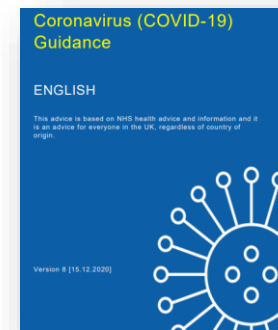
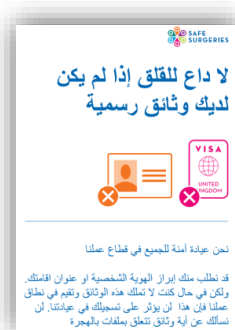
Many are homeless or live in unstable accommodation and live below the poverty line

Patients had been in the UK on average six years before coming to the clinic



Doctors of the World UK

- Supporting primary care professionals: [Safe Surgeries](#)
- Supporting patients: [translated guidance](#)
- Engaging with Experts by Experience: [National Health Advisors](#)





Defining terms

Asylum
seeker

Someone who enters or stays in the UK without the documents required under immigration regulations.

Refugee

A person whose asylum application has been unsuccessful.

Refused
asylum
seeker

Someone whose asylum application has been successful; the Government recognises they are unable to return to their country of origin owing to a well-founded fear of being persecuted for reasons provided for in the Refugee Convention 1951 or European Convention on Human Rights.

Undocumented
migrant

A person who has left their country of origin and applied for asylum in another country but whose application has not yet been concluded.



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Undocumented migrant

A person who has left their country of origin and applied for asylum in another country but whose application has not yet been concluded.



Who are undocumented migrants?

‘Undocumented’ migrants find themselves without the right documents for a variety of reasons, often beyond their control.

People who don't claim asylum due to lack of legal advice

Refused asylum seekers

People who came to UK to work without a visa

People whose visa has expired (student/working)

People who came to the UK as children with undocumented parents

People on spousal visas whose relationship breaks down

Domestic workers on expired visas which their employer doesn't renew

Survivors of trafficking



Accessing healthcare:

Primary Care



Key barriers faced



Administrative difficulties (lack of ID or proof of address)



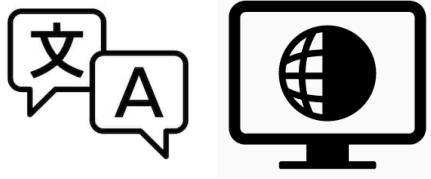
Immigration status checks



Lack of knowledge regarding the NHS



Fear of being reported to the Home Office



Barriers around accessibility (language, digital, transportation)



Primary Care Entitlement

NHS England Guidance on Registration

NHS
England



**Primary Medical Care
Policy and Guidance
Manual (PGM) (v2)**

- **Nationality and immigration status** are not relevant to GP registration and do not have to be reported:
“anybody in England may register and consult with a GP without charge”.
- **Lack of proof of address/ID** are not reasonable grounds to refuse registration.

Why are these protections so important?



- Some patients living in the practice area will be unable to prove it.
- Some patients will not have any proof of ID.
- Immigration status queries deter undocumented patients.
- New rules (charging and checks) in hospitals limit access to specialist care.
- Fear of being reported to the Home Office is justified.
- The universal right to health(care) is protected by international and UK law.



Making your GP surgery more inclusive: video





Accessing healthcare:

Secondary Care



Policy context: a 'hostile' NHS?

Immigration Act 2014:

- Extended 'hostile environment' for undocumented migrants into schools, banks and the NHS.

Since 2017, obligatory upfront charging in hospitals and NHS / non-NHS community health services.

Sharing of patient data with the Home Office w/o patient consent is inherent to charging regime.

Looking ahead: DH has announced intention to charge in **primary care** and further consult on charging in **A&E**.



Case Study: Omar

- Omar (17) came to the DOTW clinic.
- He and his family had come to the UK from Somalia for a better life.
- He had been living undocumented in London for 4 years.



Case Study: Omar

- 3 years before he came to us, Omar's GP had found a tumour in his shoulder.
- The GP had referred Omar to hospital for treatment.

Is Omar entitled to Secondary Care?



Secondary Care Charging

1. Chargeability depends on immigration status. 'Undocumented' migrants (incl. refused asylum seekers) are charged 150% of cost to NHS.
2. Charges must be paid **before** treatment (otherwise treatment withheld).
3. "*Urgent or immediately necessary*" treatment provided regardless of ability to pay (but billed for after).
4. Some services are exempt: *A&E, some infectious diseases (not co-morbidities) and 'family planning' (except termination of pregnancies)*
5. Some groups are exempt, e.g., *refugees, asylum-seekers, survivors of trafficking & some types of violence (if proven), children in care, immigrant detainees...*



<https://www.youtube.com/watch?v=XrqKyH7x4Mg&t>

Groups exempt from charges:

- Refugees and asylum seekers;
- Some refused asylum seekers, i.e. those receiving
 - *s.95 – destitute families*
 - *s4(2) – destitute and unable to return to country of origin;*
- Survivors of trafficking (only if ‘proven’);
- Survivors of sexual or domestic violence, FGM, torture
 - *only for treatment related to experience of violence;*
- Children looked after by a local authority;
- People being treated under the Mental Health Act;
- People held in immigration detention.

Urgent or immediately necessary care

- Must be given regardless of ability to pay.
- **Only clinicians can make this assessment.**
- Maternity services are always “immediately necessary”.

Source: Guidance on implementing the overseas visitor charging regulations, p. 64-65.

IMMEDIATELY NECESSARY

Life saving, will prevent a condition becoming life-threatening or will prevent permanent serious damage.

URGENT

- 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 may not be able to return **within 6 months.**



Case Study: Omar

- At the hospital the Overseas Visitors Manager identifies Omar as an undocumented migrant.
- The hospital refuses treatment unless Omar's family pays in advance.
- They cannot afford to pay and request to pay in instalments is denied.
- Omar is discharged without treatment.

Is the Overseas Visitors Manager correct?



As an undocumented migrant he *is* chargeable. But:

- Clinician had discretion to identify the treatment for his tumour as ‘immediately necessary’.
 - *Omar could be treated first and pay later.*
- The OVM had the discretion to set up a manageable payment plan, allowing his family to pay in instalments.



Case Study: Omar

- Following discharge, Omar's GP issued repeat prescriptions for painkillers.
- Omar came to DOTW's clinic 3 years later in constant pain, dependent on painkillers and with visible wasting of his left arm.
- Following a challenge by DOTW, the hospital finally agreed that treatment was U/IN and began treatment.



Charging as a barrier to healthcare

	Total to be charged
Non complex pregnancy (normal or complications, up to 2 days stay, 2 appointments)	1,176
Complex pregnancy (normal or assisted delivery with complications, up to 5 days stay, 2 scans, 4 outpatients appointments)	9,233
Booking visit only - no scan	771
Out patients visit only - no scan	402
Per Scan	160
Less than 12 hours admission (non-delivery stay)	953

1. Fear makes people avoid healthcare:

Patients fear ID checks & unaffordable bills. Debts are reported to Home Office – *affects immigration applications.*

2. Confusion about the rules and poor practice:

Clinicians wrongly deny care and gatekeeping by admin staff.

3. Bills and debt collection:

Research shows that some hospitals have resisted repayment plans and patients are chased by bailiffs, in some cases causing great distress (EHRC, 2018).

“I don’t have money – I don’t work, I don’t have money to pay them. That makes me too stressed, because all the time I receive letter I have to pay this bill.”

A woman seeking asylum in Nottingham.

“I don’t want this asthma attack because I don’t know what I’ll find at the hospital. I’m living in fear... I feel I need a case worker with me.”

Esther, a stateless woman in Nottingham, living in the UK since 2000.

“I never received any maternity care... I was so scared I didn’t ask about pregnancy care. Being part of the system would enable charges to be brought against me, and I also was afraid about deportation.”

A woman in London who had been refused asylum

Source: Equality & Human Rights Commission. *The lived experiences of access to healthcare for people seeking and refused asylum.* 2018.



Good Practice Tips: Clinicians

- ✓ Use an interpreter
- ✓ Use clinical discretion to classify treatment as 'urgent or immediately necessary', when appropriate.
 - *For transparency, complete DH form certifying decision.*
- ✓ Flag up (potential) vulnerability in notes and referrals. *Double appt. slot?*
- ✓ Take a holistic approach. *Consider mental health, housing advice, immigration advice, support groups.*
- ✓ Identify group exemptions. *Always ask about violence.*
- ✓ Inform about charges, but encourage engagement with treatment
- ✓ Book follow up appointment. *Likely to disengage with antenatal care.*
- ✓ Be conscious of fears around bills & Home Office

Source: Upfront Charging Operational Framework, Dept. of Health 2017

[Insert trust logo/letterhead]

Dear Doctor

NAME OF PATIENT

Date of birth/...../..... Hospital number

We have determined that this patient is an overseas visitor as defined in the National Health Services (Charges to Overseas Visitors) Regulations 2015. As such, the patient is liable for charges as an overseas visitor unless and until there are any applicable changes in their situation.

Government advice to safeguard NHS resources is to obtain payment where possible before treatment is given. In this case, the patient has declared that he/she will not be able to pay prior to receipt of the treatment.

However, relevant NHS bodies¹ must also ensure that treatment which clinicians consider to be immediately necessary is provided to any patient, even if they have not paid in advance. **Failure to do so may be unlawful under the Human Rights Act 1998.** Urgent treatment which clinicians do not consider immediately necessary, but which nevertheless cannot wait until the person can be reasonably expected to return home, should also be provided to any patient, even if deposits have not been secured.

The patient is likely to return home on or around/...../.....

You are asked to provide your considered clinical opinion and tick one of the declarations.

- Having made the appropriate diagnostic investigations, I intend to give treatment which is **immediately necessary** to save the patient's life/prevent a condition from becoming immediately life-threatening or needed promptly to prevent permanent serious damage occurring. All maternity treatment is considered immediately necessary.
- Having made the appropriate diagnostic investigations, I intend to give **urgent** treatment which is not immediately necessary to save the patient's life but cannot wait until the patient returns home. If the patient's ability to return changes I will reconsider my opinion.
- Having made the appropriate diagnostic investigations, I do not intend to provide treatment unless payment is made in advance, since the patient's need is **non-urgent** and it can wait until they return home. If the patient's ability to return changes I will reconsider my opinion.
- I must make further investigations before I can assess urgency.

Where treatment is given (or has been given already), the relevant NHS body is obliged to raise an invoice for the cost of such treatment, and to recover the cost of treatment where possible. Debts are written off by this hospital as losses where unrecoverable.

Date/...../..... Signed (Doctor)

Date/...../..... Signed (Overseas Visitors Manager)

¹ Relevant NHS bodies are NHS trusts, NHS foundation trusts, special health authorities (SpHAs) and local authorities in the exercise of public health functions.

Use our Secondary Care Guide



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, 2019. 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.

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.

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.

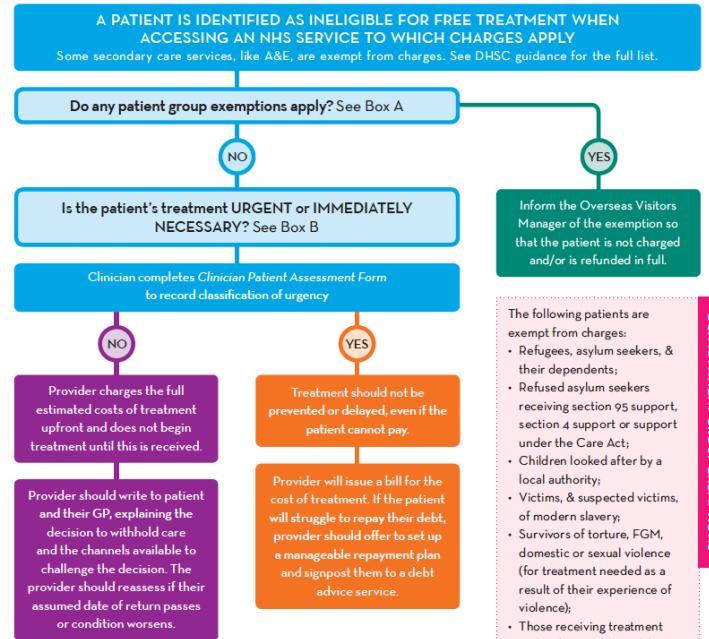
When making decisions about the care of RAS it is worth considering how long the patient has already lived in the UK without being returned.

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.



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, 2019. Guidance on overseas visitors hospital charging regulations. <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>



Why is access to healthcare important?

It is important for public health.

- Communicable diseases;
- Drug and alcohol treatment
- Mental health

It is cost-effective.

- **Prevention** and early detection;
- Admin costs of checking & charging;
- Health **inequalities** cost.

It's enshrined in human rights law & NHS principles.

- UK is bound to “give equal access to the **right to health** for all persons” (CESC, art.12).
- NHS treatment “based on clinical need, not ability to pay” (1948).

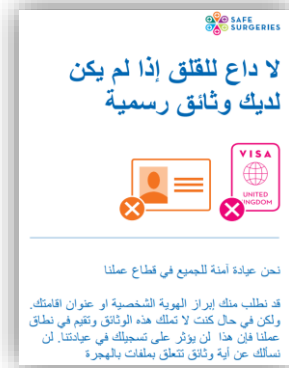


Exercise



What steps can you take to ensure all patients in your community can access healthcare? Consider:

1. Individually
2. Practice wide





Resources

- [DOTW UK tools for healthcare professionals:](#)
- Safe Surgeries toolkit and guidance;
- Policy and practice explainers.
- [DH Guidance on implementing charging](#)
- [DH Upfront Charging Operational Framework](#)
- Equality & Human Rights Commission [Healthcare access guide for people seeking asylum](#) – rights-based guidance



- For more information and to join the **Safe Surgeries network**:

<https://www.doctorsoftheworld.org.uk/safesurgeries/>

- Please complete our training evaluation form



- Contact us: SafeSurgeries@DoctorsOfTheWorld.org.uk

