BRIEFING ON AMENDMENT OF THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) REGULATIONS 2015

Doctors of the World UK

Doctors of the World UK is an international humanitarian organisation providing medical care to vulnerable populations. In the UK, we run a volunteer-led clinic and advocacy programme with GPs and nurses that helps the most excluded members of the community to get the healthcare they need. In 2016 we saw 1,924 patients, including refugees, asylum seekers, undocumented migrants, victims of trafficking and homeless people. We are seriously concerned that the amendments to the NHS (Charges to Overseas Visitors) Regulations will further push vulnerable people living in our communities away from the essential services they need, putting them at high risk of significant harm.

Some people in the UK are not entitled to free NHS hospital care. This includes people on short-term visitors, undocumented migrants, and some asylum seekers whose claims have been refused. There are already processes in place for hospitals to identify and bill patients for their care. The Government has made new regulations[i] extending NHS charges to community healthcare services and placing a legal requirement for all hospital departments and all community health services to check every patient's paperwork, including passports and proof of address, and charge upfront for healthcare, refusing non-urgent care where a patient cannot pay.

From August 2017, healthcare charges may be introduced for services provided by all community health organisations in England except GP surgeries. Any organisation receiving NHS funding will be legally required to check every patient before they receive a service to see whether they should pay for their care and, in some circumstances, patients will be charged for accessing these services.

A wide range of health services will be affected, such as health visiting, school nursing, community midwifery, community mental health services, termination of pregnancy services, district nursing, support groups, advocacy services, specialist services for homeless people and asylum seekers. Providers will include NHS organisations and, as of October, community interest companies and charities. These services are often specifically commissioned to reach marginalised communities and individuals unlikely to seek out NHS care. The introduction of charges undermines the vital role they play in protecting public health and safeguarding children and vulnerable adults.

As we read the regulations, public health services commissioned through Local Authorities, which include public mental health and drug and alcohol services, will also be affected, although it would be desirable to have clarity on this point.

The anticipated financial saving for the NHS is small (£200,000 a year[ii]), based on little evidence and likely to be overestimated. The cost to community services is estimated to be £13.64 per provider per year[iii], failing to properly take into consideration additional administrative time to check paperwork nor the cost of the chaos and confusion that will stop people accessing services. The Government has made multiple commitments to carry out an assessment of the unintended consequences of extending NHS charges on 'vulnerable people', pregnant women and children[iv], but this has not happened.

From October, every hospital department in England will be legally required to check every patient's paperwork before treating them, to see whether they are an overseas visitor or undocumented migrant and

should pay for their care. Every patient, British citizen or person under immigration control, will be asked about their residency status and will need to prove they are entitled to free NHS care. Pilots requesting all patients to provide two forms of identity prior to appointments are being carried out in 20 hospital trusts across England. The obligation to check patient paperwork applies to services exempt from charging on public health grounds, such as infectious disease departments and HIV clinics.

If a patient cannot prove that they are entitled to free care, they will receive an estimated bill for their treatment and will have to pay it in full before they receive any treatment other than that which is 'urgent' or 'immediately necessary'. Doctors will have to review each case to decide if care is 'immediately necessary' or 'urgent' enough to go ahead and provide treatment before requiring payment.

This change will affect people who are entitled to free care but who may not have easy access to paperwork and passports, such as homeless people, elderly people, those living with mental health conditions and asylum seekers. The inevitable increase in bureaucracy could lead to increased patient waiting times. And there is a risk that, rather than check all patients' paperwork, trusts rely on 'racial profiling' as a means of identifying chargeable patients, therefore increasing health inequalities.

The regulations also introduce an obligation on trusts to record if a patient is not entitled to free NHS secondary care on their NHS number. This measure, and upfront charging, were not included in Department of Health's 2016 consultation on NHS cost recovery and as such have not received public scrutiny.

These changes have been laid before parliament and will become law without debate unless there is an objection from either House.

Impact of NHS Charges on Community Services

At Doctors of the World clinics, the patients we see are often homeless, have experienced trauma and violence, and are victims of trafficking, modern day slavery and exploitation. The upcoming regulations mean many of these patients will no longer be able to access essential community services because they simply cannot afford to pay for them. Community mental health services, crucial in protecting everyone in a community as well as preventing people requiring more specialist care and emergency admission through A&E, will become inaccessible. And parents of children will be unlikely to access essential support services, such as health visiting or school nursing, which play a key role in keeping children safe and well.

A particular area of concern is abortion services, often provided in the community and by charitable organisations. Many women excluded from free NHS care have limited access to contraception; this includes sex workers and trafficking victims[v] who are undocumented. These women, and other undocumented migrants, are at increased risk of sexual violence including rape. Timely, affordable access to an abortion is essential for women without access to contraception, and restricting access will increase illegal and unsafe abortions.

Case Study 1 *- Helen arrived in the UK in 2014 after a six-year journey from her home country, Eritrea. During those years, she was detained in prisons for crossing borders and often at the mercy of ruthless smugglers. In 2016, she became homeless in London when a friend's offer of a place to stay fell through, and she then found out she was five weeks pregnant. "I was sleeping outside, I was hungry and I had no food. I was so worried that I couldn't even sleep," she recalls. "How could I handle a pregnancy when I had no plan?" Helen decided her life was too unstable to have a baby, but she couldn't see a doctor to arrange an abortion. She knew she needed to act before her pregnancy advanced too far but four GP surgeries turned her away for not having paperwork to prove her address, even though no such documents are required. "The whole experience was tiring and scary. I really didn't know what to do," she says.*

Helen heard about Doctors of the World's clinic from another charity. Our volunteers spent weeks liaising with GP surgeries and other providers, and were eventually able to register her with a GP and arrange access abortion services. Helen's abortion was carried out free of charge by a charitable organisation.

"It was a turning point for me," she says. "If I had had a baby while I had such a complicated life, it would not have been good for anyone. Having children is a good thing, but I couldn't do it at that time."

Just over a year later, Helen has refugee status and a job as a chef.

Upfront charging for NHS care

Doctors of the World is concerned about the impact that upfront charging will have on our patients, and disappointed it was not included in the 2016 consultation on NHS cost recovery so we have not been able to outline our concerns to Department of Health.

In our clinics we already see destitute people who are unable to access hospital care because the hospital, sometimes wrongly, decides their care is not 'urgent' or 'immediately necessary', and withholds treatment until they pay upfront. Sometimes doctors have not been provided with proper guidance on the scope of their decision, and sometimes decisions are made without any input from doctors at all.

Case study 3 *- Deidre is from the Caribbean. She came to live in London with her daughter Sally, a UK citizen, after she was widowed.*
In 2016, Deidre was diagnosed with cancer. A specialist advised her that she was too sick to fly home, and another clinician later confirmed that the need for chemotherapy was 'urgent'. Despite this, the hospital demanded a five-figure sum before treatment could commence. As a care worker, Sally is not able to pay for her mum's treatment all in one go.
Doctors of the World is supporting Sally to challenge the hospital's decision to refuse the healthcare that Deirdre so desperately needs. In the meantime, Deidre remains at home, with her pain poorly controlled. We continue to work on her case.

These new regulations – requiring all hospitals' departments to withhold care until payment is secured – will make this situation worse. Those who cannot afford to pay in advance simply will not be able to go to their hospital appointments. This includes people who are entitled to free care but who may not have easy access to paperwork, such as homeless people, those without a passport and asylum seekers.

The new regulations will also reduce the opportunity for doctors to identify when a patient needs lifesaving care. To establish whether treatment is 'urgent' or 'immediately necessary', tests usually need to be carried out. But if a patient cannot afford to pay for their first hospital appointment, doctors won't be able to carry out tests, and lifesaving care will be withheld.

Case study 2 - *Djibril says that when he was refused cancer treatment he was "very scared and desperate […] and worried that [his] days were numbered". He had arrived in the UK 17 years earlier, fleeing political persecution in his home country. He claimed asylum, but this was turned down. Twice the Home Office has tried to return to his home country – yet on each occasion the local authorities refused to allow him back. He remained living in limbo in the UK. In 2016 he was diagnosed with cancer and told he needed surgery, but the hospital cancelled the operation because his asylum case had been refused. Djibril's medical notes explained that there was a risk of the cancer spreading if he did not receive treatment. Despite this, the hospital declined to treat him unless he paid for the surgery in advance. Unable to pay upfront or return home, Djibril came to Doctors of the World. The treatment was provided after a significant delay and after we supported Djibril to get legal help to challenge the hospital's decision. Following the surgery Djibril says he woke up and "felt like I was born again".*

Recommendations

The regulations should be withdrawn. The government should carry out and make public the results of:

- an assessment of the impact of extending charges into community services on vulnerable groups, pregnant women and children[vi]
- an assessment of the impact of upfront charging and checking patient paperwork on access to services, health outcomes and patient waiting times, including an evaluation of the ongoing pilots taking place in hospital trusts
- an impact assessment evidencing the proposed regulations do not breach the Secretary of State for Health's duty to reduce health inequalities under the Health and Social Care Act 2012
- a human rights impact assessment on upfront charging
- a public consultation on the parts of the regulations not included in the 2016 consultation on NHS cost recovery: upfront charging and recording information against NHS number (consistent identifier).

On the completion of the above, any regulations to extend charging into new areas of care and / or introduce upfront charges should:

- exempt all services that protect public health, including public mental health services, drug and alcohol treatment services and community midwifery services
- exempt all services provided by charities or community interest companies
- exempt all abortion providers
- exempt asylum seekers whose claims have been refused, as is the situation in Northern Ireland and Scotland[vii]
- require all decisions to withhold healthcare pending payment to be 1) subject to a second clinical opinion and (2) open to challenge by a patient
- be accompanied by Department of Health guidance for hospitals and doctors 1) outlining how to implement the regulations in a way that is not discriminatory and does not violate human rights or increase health inequalities and 2) confirming that routine identity documents checks should not be carried out in services where NHS charges do not apply, such as infectious disease services and A&E, or in maternity services.

What can you do?

- Write to your MP voicing your concerns that 1) extending charges to community services will restrict access to these vital services that play a role in protecting us all, and 2) upfront charging will lead to healthcare, sometimes lifesaving care, being delayed or withheld from patients. If you would find it difficult to provide two forms of ID, you should point this out.
- Raise the issue with your local Health and Wellbeing Board and Clinical Commissioning Group, asking the Chair to write to the Secretary of State for Health outlining their concerns.
- If you are a healthcare professional, raise your concerns with your employer. Ask your employer what measures they are taking to ensure the new regulations will not prevent patients from accessing care nor increase health inequalities. You could also raise these concerns with your union and royal college.
- If you are part of a charity or social enterprise which receives NHS funding, write to your MP raising your concern that this legal requirement will put an unworkable bureaucratic burden on your organisation and prevent you from providing essential services to those who need them.

[i] *The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017* from: http://www.legislation.gov.uk/uksi/2017/756/contents/made

[ii] *Impact Assessment: Visitor and Migrant Cost Recovery – Amending and Extending the Charging Regulations* from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630516/Cost_Recovery_IA.pdf

[iii] The DH's £100,000 training fund would need to be split between a low estimate of 7,331 independent provider sites and a high estimate of 9,607 sites, resulting in a per site funding range of £10.40 - £13.64 for staff retraining and associated administration costs of implementing cost recovery programmes. Ben Gershlick, Zoe Firth. *Briefing: Provision of community care: who, what, how much?* The Health Foundation. April 2017. *NHS Confederation*. "Key statistics on the NHS". Last updated: 14 / 7 / 2017 10 am. Retrieved 07 / 08 / 2017 from: http://www.nhsconfed.org/resources/key-statistics-on-the-nhs

[iv] Department of Health made these commitments following recommendations by Home Affairs Committee and Major Projects Authority (both in 2015) that such evaluations took place before cost recovery was extended to other areas of the NHS.

[v] https://www.amnesty.org/en/latest/news/2016/07/refugees-and-migrants-fleeing-sexual-violence-abuse-and-exploitation-in-libya/

[vi] Department of Health made these commitments following recommendations by Home Affairs Committee and Major Projects Authority (both in 2015) that such evaluations took place before cost recovery was extended to other areas of the NHS.

[vii] Regulation 9, Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015