

TABLE OF ENTITLEMENT TO NHS TREATMENT (Correct as of April 2009)

The Department of Health appealed a High Court ruling, which found that, in certain circumstances, failed asylum seekers can pass the ordinary residence test that confers an automatic right to free NHS hospital treatment or, alternatively, be exempt from charges for hospital treatment after having spent one year in the UK.

In a judgement issued on 30 March 2009, the Court of Appeal found that failed asylum seekers can not be considered to pass the ordinary residence test, nor can they be considered exempt from charges by virtue of spending one year in the UK. This is now the law. The Court of Appeal also found that Trusts have the discretion to withhold treatment pending payment and also the discretion to provide treatment where there is no prospect of paying for it. Trusts should take account of DH guidance when applying this discretion.

Status	Primary Care	Secondary Care
Asylum Seeker	A person who has formally applied for asylum is entitled to NHS treatment without charge for as long as their application (including appeals) is under consideration. They will have to pay certain statutory NHS charges (e.g. prescription charges) unless they also qualify for exemption from these (see notes section), and will go on waiting lists. Since asylum seekers are entitled to free NHS treatment, they can apply to a general practitioner to register as a patient. Asylum seekers are exempt from charges for NHS hospital treatment.	A person who has formally applied for asylum is entitled to NHS treatment without charge for as long as their application (including appeals) is under consideration. They will have to pay certain statutory NHS charges (e.g. prescription charges) unless they also qualify for exemption from these (see notes section), and will go on waiting lists. Since asylum seekers are entitled to free NHS treatment, they can apply to a general practitioner to register as a patient. Asylum seekers are exempt from charges for NHS hospital treatment.
Asylum Seeker refused but appealing decision.	Access to primary care without charge. As for Asylum Seeker	Access to secondary care without charge As for Asylum Seeker.
Asylum Seeker denied support under Section 55 of the 2002 Act, but still claiming asylum.	Access to primary care without charge. As for Asylum Seeker	Access to secondary care without charge As for Asylum Seeker.
Failed asylum seekers – including those getting Border & Immigration Agency (BIA) Section 4 support while awaiting departure from the UK	<p>GP practices have the discretion to accept such people as registered NHS patients.</p> <p>In cooperation with the Home Office, DH will review access to NHS healthcare by foreign nationals this year. The review will include access to both primary and secondary care and will look at a range of issues relating to immigration and asylum arrangements, particularly the eligibility of failed asylum seekers and the status of children, whether accompanied or unaccompanied, as well as public health issues.</p> <p>Emergencies or treatment which is immediately necessary should continue to be provided free of charge within primary care to anyone, where in the clinical opinion of a health care professional this is required.</p> <p>N.B. The judicial review ruling has had no effect on Primary Care.</p>	<p>For secondary care, failed asylum seekers are not eligible for free hospital treatment. However, any course of hospital treatment already underway at the time when the asylum seeker's claim, including any appeals, is finally rejected should remain free of charge until completion. It will be a matter for clinical judgement as to when a particular course of treatment has been completed. Immediately necessary treatment to save life or prevent a condition from becoming life-threatening should always be given to failed asylum seekers without delay, irrespective of their eligibility for free treatment or ability to pay. However if they are found to be chargeable, the charge will still apply, and recovery should be pursued as far as the trust considers reasonable. Treatment which is not immediately necessary, but which is urgent and a clinician considers cannot wait until the person returns home must also be given, even if deposits cannot be secured. In making the decision as to whether the treatment is urgent, it will be necessary for the clinician to know when the patient is likely to return home to assess if this is a medically acceptable wait.</p> <p>Any new course of treatment, begun after the asylum claim is finally rejected, will be chargeable (unless the treatment itself is exempt under the provisions of the NHS (Charges to Overseas Visitors) Regulations 1989, as amended, e.g. TB). Trusts should refer to the document "Implementing the</p>

		<p>Overseas Visitors Hospital Charging Regulations - Guidance for NHS Trust Hospitals in England" for advice on how and when to make the charge in these cases.</p> <p>It is also very important that Trusts read the letter of 2 April 2009 from David Flory as it contains important interim advice. See Link at : http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_097384</p> <p>In cooperation with the Home Office, DH is currently reviewing access to NHS healthcare by foreign nationals. The review includes access to both primary and secondary care and looks at a range of issues relating to immigration and asylum arrangements, particularly the eligibility of failed asylum seekers and the status of children, whether accompanied or unaccompanied, as well as public health issues.</p>
Given Refugee Status (successful asylum seeker or, arriving in the country through a Government initiative, i.e. Refugee Gateway Scheme)	Access to primary care without charge. As for Asylum Seeker.	Access to secondary care without charge As for Asylum Seeker.
Given Discretionary Leave to Remain	Access to primary care without charge As for Asylum Seeker.	Access to secondary care without charge As for Asylum Seeker
Given Humanitarian Protection	Access to primary care without charge As for Asylum Seeker.	Access to secondary care without charge As for Asylum Seeker.

Certain services are exempt from charges for everyone. This includes treatment provided solely in an Accident and Emergency Department, treatment of certain specified communicable diseases (although prescription charges may be payable unless exempt) and compulsory mental health treatment. Flu immunisations are given to those who are in at risk categories. These categories include anyone over 6 months with respiratory disease (inc. asthma), chronic heart disease, renal disease, diabetes and immunosuppression or staying or living in long stay facilities – or who at the GPs' discretion needs to have a flu jab on a clinical need basis.

HIV/AIDS

In the case of services which relate to HIV/AIDS only the initial test and counselling is free to all. People not eligible for free hospital treatment are required to pay the full costs, including drugs, of any HIV treatment beyond the initial test and counselling. Where a person has been identified as chargeable (not an asylum seeker) for HIV/AIDS treatment a HC2 (certificate for full help with health costs) is not applicable and the full cost of the drugs should be recovered from them. The guidelines in the table above regarding immediately necessary treatment and treatment already under way when an application for asylum is finally rejected, apply equally to HIV/AIDS treatment.

Maternity Services

Maternity services should always be classed as immediately necessary treatment (see above) and provided even if the pregnant woman is unable to pay in advance. As with other immediately necessary treatment, however, the patient remains chargeable if they are not eligible for free hospital treatment and reasonable steps should be taken to recover the debt.. Maternity services can include treatment to prevent transmission of HIV/AIDS from mother to child if considered clinically appropriate.

Enquiries about this table should be addressed to: Lynda Norton on 0113 2546605, or Lynda.norton@dh.gsi.gov.uk

Notes

Secondary Care

It is the responsibility of the NHS trust or Primary Care Trust (PCT) providing secondary care to establish if a person is entitled to treatment without charge (although out-patients may have to pay charges for drugs and appliances unless they are exempt). All patients, regardless of their status or nationality are subject to the same basic screening process and should be asked the following question about their residential status as part of the hospital registration procedure:

- Where have you lived for the last 12 months?
- Can you show that you have the right to live here?

A person who has not been living in the UK for the last 12 months is usually subject to the NHS (Charges to Overseas Visitors) Regulations and can therefore expect to be asked further questions such as,

- On what date did you arrive in the UK?
- What is the basis for your stay in the UK?

Patients who are unable to provide answers to these questions, or whose answers indicate that they may not be eligible for free hospital treatment should be referred to the NHS trust's Overseas Visitors Manager, who will conduct a full interview with the patient to establish whether he/she is chargeable. However, immediately necessary treatment should never be delayed or withheld because of doubts about the patient's chargeable status or his/her ability to pay.

Help with Access to Health Services

If asylum seekers and refugees are having difficulties registering with a GP, they should contact their local PCT who will be able to provide a list of practices to which they can apply. Where a person, who is entitled to free NHS treatment, has had their application to join a practice's list of patients refused, they can apply to the PCT, which has the power to allocate them to a GP

PCTs will also be able to provide information on local Community Dental Services and dentists in an area treating patients under the NHS. NHS Direct, provides information on local GPs and NHS dentists. You can also find out about services in your area (including PCT contact details) by going to: <http://www.nhs.uk/localnhsservices/default.asp>

Help with Health Costs

Under the Immigration and Asylum Act 1999 and the Asylum and Immigration Act 1996, most asylum seekers are not entitled to welfare benefits. However they may qualify for:

- Free NHS prescriptions;
- Free NHS dental treatment ;
- Free NHS wigs and fabric support ;
- Necessary travel costs to and from hospital for NHS treatment ;
- Free NHS sight tests ;
- The full value of an NHS optical voucher towards the cost of glasses or contact lenses.

The United Kingdom Border Agency (UKBA) will issue HC2 certificates to asylum seekers after they claim asylum and when they are being dispersed.

Asylum seekers not supported by UKBA

Asylum seekers who are not supported by UKBA or those supported by the Interim Arrangements and who are not otherwise entitled to free prescriptions, will need to complete form HC1 (claim for help with health costs including prescriptions through the NHS Low Income Scheme (LIS)). Health practitioners who come into contact with asylum seekers should encourage them to apply. Failed asylum seekers can also apply.

Since the interim support arrangements were introduced on 6 December 1999, the Patient Services Division (PSD) (previously the Health Benefits Division) of the Prescription Pricing Authority (who run the LIS for the Department of Health) have made arrangements for claims from asylum seekers to be given priority. They have arranged for a separate postcode to be printed on white envelopes, which asylum seekers can use to send off their HC1 claim form.

HC1s are available from the PSD or in bulk from Department of Health, PO Box 777, London, SE1 6XN. Tel: 08701 555 4555 (Department of Health publications order line). Fax: 01623 724 524.

HC1 Completion Guidance Notes

This note contains guidance for case workers and health professionals who help asylum seekers to complete the HC1 form. Asylum seekers who have not received an HC2 certificate from UKBA are eligible to apply for one using an HC1 form under the low-income scheme which is managed by Patient Services at the PPA. Failed asylum seekers are also able to apply for an HC2 certificate using an HC1 form.

Asylum seekers who have received an HC2 certificate should apply directly to UKBA for a new certificate when their old one expires. There is no need to fill in a new HC1 form or to re-apply through Patient Services.

Fast Track System

A system operated by Patient Services is in place that speeds up the process for asylum seeker cases. This fast-track procedure should also be adopted and followed by Social Services:

1. Order bulk supplies of HC1 forms (claim for help with health costs) from Department of Health PO Box 777, London SE1 6XN, Tel: 08701 555 4555, Fax: 01623 724 524.
2. To enable applications from asylum seekers to be fast-tracked, white envelopes (as opposed to the supplied brown ones) need to be used. To obtain these contact Patient Services on their enquiry line, 0845 850 1166.
3. Once the HC1 has been completed and signed by the claimant, post it in the white envelope to Patient Services.
4. Once received, Patient Services give claims in white envelopes priority and aim to issue a reply within 5 days.

In order for the appropriate level of support to be given and for the fast-track system to operate as intended, the HC1 form must be completed correctly. However, many assessments are delayed due to forms containing errors or being incomplete. Common errors include:

- **Signatures** – Case workers often sign HC1s on behalf of their clients because the client cannot speak English. Patient Services is unable to accept HC1s signed by a third party, the claimant or partner must sign them or make their mark. The caseworker should ensure that this happens.
- **Income** – Often the amount of income that the applicant / their family receives is not specified on the HC1. Patient Services need to know this information, without it the HC1 will be returned as incomplete. UKBA support should be recorded in section 5.2 " Do you or your partner get any other income?". Throughout the document the 'no' boxes should be ticked for which do not apply.

Where income is payable for a child, this is often paid under the Children's Act. Income paid under sections 17, 23B 23C or 24A is fully disregarded in the assessment therefore if caseworkers could specify the act payments are made under, it will help their clients assessment.

- **Capital** – Although most asylum seekers are unlikely to have any capital or own any capital assets, the 'no' boxes must be ticked on the page covering property, savings and other money to indicate this.

- **Extended Families** – Under asylum laws, extended families are assessed and paid as one family unit. Low Income rules are different, assessments are made for traditional family units. Consequently it is not possible to include aunts, cousins or grandparents on a single assessment unless they are a minor for which the claimant and partner have responsibility. It is therefore necessary for separate applications to be submitted and for income details to be broken down accordingly.
- **Asylum seekers living in Hostels/Hotels** – Room numbers need to be added if the applicant lives in a hostel or hotel. In cases where asylum seekers are in temporary accommodation, it may be advisable to use Social Services', voluntary agency or health centre addresses as large numbers of certificates are returned when asylum seekers move out.
- **Inconsistencies**– There have been cases where the asylum seeker states that they are supported by UKBA, but no record appears on the database. This may be due to a delay in the data being entered onto the database. However for some cases the spelling of the name on the HC1 is different to the spelling on the UKBA supplied database which is used by Patient Services. It is helpful if case workers, where possible, ensure that the spelling of names and order of names are consistent with the info which was given to UKBA.