

ILPA information sheet

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Access to Healthcare 4

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This month, the Department of Health published the Government's response to the most recent (February 2010) consultation by the Department of Health and the Home Office on access to healthcare. This information sheet sets out what the Government decided.

The Government's response is available at:

http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_125271

Further information, including a statement by the Immigration Minister is available at:

<http://www.ind.homeoffice.gov.uk/sitecontent/newsarticles/2011/march/51-getting-tough-on-nhs-debtors>

Previous ILPA information sheets

The October 2009 "Access to Healthcare 3" information sheet gives information about an earlier review of access to healthcare. That review looked at much the same matters as were looked at in the most recent February 2010 consultation.

The May 2008 "Access to Healthcare" and April 2009 "Access to Healthcare 2" information sheets provide information about what healthcare is free to migrants on the NHS. Generally, primary healthcare and accident and emergency services remain free to all.

The remainder of this information sheet sets out what the Government now says it intends to do.

Changes to the Immigration Rules concerning NHS debtors

The Government has decided that, in October 2011, the Immigration Rules will be changed so that applications for leave to enter or remain will normally be refused if the applicant has an outstanding debt to the National Health Service (NHS) of £1,000 or more.

It is already the case that the UK Border Agency may take into account that a person has accessed free NHS treatment, to which he or she was not entitled, when considering an application for leave to enter or remain in the UK. This is one reason why ILPA questioned the need for, or propriety of, the change the Government intends to make. However, in view of the Government's newly stated intention to change the Immigration Rules, it may now be arguable that accessing free treatment at a cost to the NHS of less than £1,000 should normally not lead to a refusal under the Rules. Anyone concerned whether these considerations will apply to him or her should seek immigration advice.

Asylum-seekers access to free secondary healthcare

The Government says that the law relating to access to free healthcare in England will be changed so that refused asylum-seekers will be entitled to free secondary healthcare on the NHS if they are receiving asylum support (under sections 4 or 95 of the Immigration and Asylum Act 1999) and are co-operating with the UK Border Agency in taking steps to arrange their departure from the UK. This will put them in the same position as asylum-seekers whose claims or appeals remain outstanding.

Health is a devolved issue. This means that the UK Government does not determine health law and policy in the devolved regions – Northern Ireland, Scotland and Wales. The Welsh Assembly Government and the Scottish Government have previously indicated more favourable access to NHS treatment for refused asylum-seekers. More information is given in the previous information sheets referred to above.

Those receiving free NHS treatment when their immigration status changes

The Government says that those who have begun a course of treatment provided free by the NHS will not be charged to continue that treatment simply because their immigration status has changed and they are no longer entitled to free treatment. In such circumstances, a course of treatment can be continued without any charge.

Returning UK residents

Currently, UK residents, who spend a period of three months abroad, may lose their automatic entitlement to free hospital treatment. The three months is to be extended to six months. UK residents, who return to the UK after a period of up to six months abroad, will then be able to access free NHS hospital treatment.

Disclosure of information by the NHS to the UK Border Agency

The Government says that the NHS will provide information to the UK Border Agency for the purpose of identifying NHS debtors. ILPA has expressed concerns about the risk that these arrangements will undermine the trust and confidence that patients (or those that need treatment but have not yet sought it) have in the NHS/doctors.

Further review

There is to be a further review concerning access to health services. That review will look at access to general practitioner (GP) services.

Further observations

ILPA responded to the February 2010 consultation on 28 June 2010. That response remains available on the ILPA website in the ‘Submissions’ section. In it, ILPA referred to the report of the Joint Committee on Human Rights’ Tenth Report for the Session 2006-07 *The Treatment of Asylum-Seekers* (HC 81/HL 60), where the Committee said:

166. The Health Minister told us that that no information had been collected centrally about the costs and benefits of charging refused asylum seekers for secondary healthcare. We are concerned and very surprised that no steps are being taken to monitor the cost or effect of the 2004 charging regulations in relation to the provision of secondary healthcare.

The Committee’s recommendation remains outstanding and information has not been collected. The Committee’s report is available at:

<http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf>