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BRIEFING PAPER

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NHS charges for overseas visitors

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Summary

The NHS is built on the principle that it provides a comprehensive health service, based on clinical need, not ability to pay. However, regulations impose a charging regime in respect of NHS treatment for persons who are not ordinarily resident in the UK. The charging regime provides for some categories of non-residents to be exempt from charges, international agreements (including transitional arrangements with the EU) provide reciprocal healthcare that benefits visitors from and to participant countries. Under the overseas visitor charging regulations, charges only apply to secondary (hospital) care and community care services. However, certain secondary and community care services provided by the NHS are specifically excluded from the charging requirement in the regulations.

The principle that NHS services are free at the point of use, unless charges are explicitly allowed for by statute, applies throughout the UK but decisions about specific charges are devolved and these may differ in the different countries of the UK. This briefing describes the position in England - see section 6 for links to information relating to other parts of the UK.

This briefing is intended to provide background information for Members of Parliament with questions about NHS overseas visitor charges. It provides an overview rather than a detailed account of the rules. The NHS website provides general guidance for overseas visitors about charges for NHS services and where, based on their individual circumstances, they may be exempt from charges. As noted above, the main legislative provisions are contained in regulations, and the Department of Health and Social Care (DHSC) has issued Guidance on implementing the overseas visitor charging regulations (updated February 2020).

Under the terms of the Withdrawal Agreement, there is a transition period which lasts until 31 December 2020 during which reciprocal healthcare rights under EU Regulations continue to apply in the UK. From 1 January 2021, EEA/Swiss visitors may not be covered for healthcare as they are now and may become chargeable. The UK Government has said it wants to continue discussing the future of reciprocal healthcare arrangements with the EU as part of the future relationship discussions.

GP services are excluded from the overseas visitor charging regulations, although, the DHSC guidance does sets out some information on registering overseas visitors in primary care (see section 5 of this briefing for further information on GP services). It should be noted that being registered with a GP, or having an NHS number, does not give a person automatic entitlement to access free NHS hospital treatment.

Hospitals, community healthcare services, and GPs, also have a duty to provide free of charge treatment which they consider to be an emergency or immediately necessary, regardless of whether that person is chargeable as an overseas visitor. Services provided in an A&E department are currently exempt from charge. The DHSC charging guidance also makes clear that no woman must ever be denied, or have delayed, maternity services due to charging issues.

The *Immigration Act 2014* makes provision for non-EEA temporary migrants (for example, workers, students or family members, who do not have indefinite leave to remain) to pay an obligatory 'health surcharge' in addition to the visa application fee. The payer is then entitled to free NHS services for the duration of the visa (with certain limited exceptions). The Act also adopts a revised definition of qualifying residence, with non-EEA migrants

required to be current residents with indefinite leave to remain to qualify for free NHS treatment on the basis of ordinary residence. Further information is provided in the Library briefing, The Immigration Health Surcharge.

The UK Government has introduced a number of measures to improve the system for identifying patients who should be charged, and consulted on a number of other proposals to amend and extend the scope of charging regulations. In 2014 the Government published a Visitor and Migrant NHS Cost Recovery Programme Implementation Plan and the NHS visitor and migrant cost recovery programme webpage provides current information and resources for NHS organisations and frontline staff.

In December 2015 the Department of Health consulted on proposed changes to further extend charging for overseas visitors and migrants who use the NHS, and amendments to the regulations introduced in 2017 included several of these proposed changes. These amendments extended the scope of the charging regulations to community healthcare services and NHS funded healthcare services provided by non-NHS bodies to the list of chargeable services. All organisations that provide eligible NHS services, not just NHS bodies, are now responsible for charging patients. Under the 2017 regulations providers of chargeable services are also required to recover an estimate of treatment costs upfront (except where this would delay or prevent the provision of urgently necessary treatment). Other proposed changes, such as the introduction of charges for A&E and ambulance services are awaiting further Government decisions. GP consultations are expected to remain free of charge, in part due to concerns that overseas visitors with serious illnesses or communicable diseases would not seek help if charges were introduced for primary medical care.

There have been calls from a number of national bodies representing doctors, and organisations campaigning on migrant rights, for NHS overseas visitor charges to be suspended or abolished, amid criticism that they are unfair and harmful to both individual and public health. There are also concerns that some vulnerable patients have been charged incorrectly or had their treatment delayed, with a number of individual cases highlighted in the media. Similar calls have been made to abolish the Immigration Surcharge or remove the obligation to pay from certain groups, such as NHS staff.

Covid-19 has been added to Schedule 1 of the overseas visitor charging regulations, meaning there can be no charge made to an otherwise chargeable person for the diagnosis or treatment of this disease.

1. Introduction

Overview of the overseas visitor charging regulations

The 2015 charging regulations (as amended[1]) place a legal obligation on bodies providing certain NHS funded services to establish whether a person is an overseas visitor to whom charges apply, or whether they are exempt from charges. Under the regulations, charges only apply to secondary (hospital) care and community care services. However, certain secondary and community care services provided by the NHS are specifically excluded from the charging requirement in the regulations, such as A&E services. GP services, and primary dental and ophthalmic services, remain outside the scope of the overseas charging regulations.

A list of exempt services, and exempt categories of overseas visitor, can be found in chapter 1 of the Department of Health and Social Care (DHSC) Guidance on implementing the overseas visitor charging regulations (updated February 2020). Sections 1.2 and 1.3 of this Library briefing also provide an overview of the main exempt services, and exempt categories of visitor.

In recent years the rules have been subject to a number of significant changes. In particular, from 6 April 2015 visitors who live outside the EEA, including former UK residents, who are not covered by personal health insurance, will be charged at 150 per cent of the NHS national tariff for any care they receive (unless an exemption applies to them under the charging regulations). Since 23 October 2017, relevant bodies are required to recover an estimate of treatment costs upfront (except where this would delay or prevent the provision of urgently necessary treatment).

1.1 Background to the charging regulations

The *National Health Service Act 2006* requires the Secretary of State to promote a comprehensive health service that must be free of charge, unless a charge is expressly provided for by legislation. The Act itself makes provision for some charges, for example, it enables regulations to raise charges for prescriptions, dental services, optical appliances, and NHS services provided to anyone who is not ordinarily resident in the UK.

Legislation permitting persons who are not ordinarily resident in the UK to be charged for NHS services dates back to 1977, and subsequent regulations, first introduced in 1982, impose a charging regime in respect of hospital treatment for overseas visitors. The regulations define an overseas visitor as someone who is not ordinarily resident in the UK but the term 'ordinary residence' is not defined either in the 2006 NHS Act or in the regulations (see box 1 below).

Box 1: Ordinary residence

Ordinary residence is a common law concept, which was the subject of a judgment in the House of Lords in 1982 that has since been taken to have wider application to the NHS overseas visitor charging regulations.

[1] *National Health Service (Charges to Overseas Visitors) Regulations 2015* (*SI 2015/238*) as amended by the *NHS (Charges to Overseas Visitors) (Amendment) Regulations 2017* (*SI 2017/756*)

In order to take the House of Lords judgement into account, when assessing a person's residence status a body providing NHS services will need to consider whether they are:

"…living lawfully in the United Kingdom voluntarily and for settled purposes as part of the regular order of their life for the time being."

UK citizenship, past or present payments of UK taxes or National Insurance contributions, being registered with a GP, having an NHS number, or owning property in the UK are not directly taken into account in the way that ordinary residence has been defined.

Ordinary residence can be of long or short duration and there is no minimum period of residence that confers ordinarily resident status. In the past, the Government has suggested that someone who has been in the UK for less than 6 months is less likely to meet the "settled" criterion for ordinary residence but it is important to realise that this is only a guideline. The DHSC Guidance on implementing the overseas visitor charging regulations provides advice on the way that ordinary residence should be established in practice, and how those who are not ordinarily resident should be identified.

There are several groups of people who are exempt from charging, or are entitled to free NHS care because they remain ordinarily resident in the UK, despite spending time outside the UK. These are set out in Section 1.4 of this briefing.

The *NHS (Charges to Overseas Visitors) Regulations 2015* *(SI 2015/238)*, came into force on 6 April 2015, and made a number of changes to the way the NHS charges overseas visitors for NHS hospital care (including some changes that affected some former residents of the UK).[2] In particular, from April 2015 visitors who live outside the EEA, including former UK residents, who are not covered by personal health insurance, will be charged at 150 per cent of the NHS national tariff for any care they receive (unless an exemption applies to them under the overseas visitor charging regulations).[3] Since April 2015, UK state pensioners who live elsewhere in the EU/EEA and are registered for healthcare in Europe with an S1 form have the same rights to NHS care as people who live in England. UK nationals who return to the UK on a settled basis will generally be classed as ordinarily resident and will be eligible for free NHS care immediately.

There have been subsequent changes to the 2015 regulations, notably, that from 23 October 2017, providers of NHS services are required by law to withhold treatment from chargeable overseas visitors until the estimated full cost of the service has been paid, unless doing so would prevent or delay immediately necessary or urgent services.[4] For the most recent legislative position, Members should refer to the DHSC Guidance on implementing the overseas visitor charging regulations.

Currently, most people, who live or work in another EEA country or Switzerland can get free NHS care during visits to the UK, by using a European Health Insurance Card (EHIC) issued by the country they live in. By recording a patient's EHIC details the NHS can reclaim healthcare costs from their country of residence.

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2 The 2015 Regulations replaced the *NHS (Charges to Overseas Visitors) Regulations 2011*, (as amended) SI 2011/1556.

3 DH press release, New rules to improve overseas visitors' contributions to NHS care, 16 February 2015

4 These changes were introduced by the *NHS (Charges to Overseas Visitors) (Amendment) Regulations 2017*

1.2 Brexit and access to NHS services by EU/EEA nationals

Under the terms of the Withdrawal Agreement, there is a transition period which lasts until 31 December 2020 during which reciprocal healthcare rights under EU Regulations continue to apply in the UK.

During this transition period, individuals from the EU, EEA and Switzerland will continue to be able to access NHS care for treatment that is medically necessary during visits to the UK using their European Health Insurance Card (EHIC).[5] However, from 1 January 2021, EEA/Swiss visitors may not be covered for healthcare as they are now and may become chargeable. The UK Government has said it wants to continue discussing the future of reciprocal healthcare arrangements with the EU as part of the future relationship discussions.[6]

Healthcare for EU/EEA citizens living in the UK

The UK Government has stated that the rights of citizens of EU/EEA countries and Switzerland living in the UK at the end of the transition period will be protected, and this includes being able to access NHS care without charge on the basis that they are ordinarily resident in the UK.

The Government has also published Information on healthcare for citizens of EU/EEA countries, and Switzerland, living in the UK. This notes that:

> If you are living lawfully in the UK before the end of 2020, you will be able to use the NHS in England, as you can now, after that date. If you are not ordinarily resident in the UK, you will be an overseas visitor and may be charged for NHS services.

The Government information also provides information for EU citizens studying in England, and EU citizens accessing healthcare in the UK via the S1 route:

> **Studying in England**
>
> You can continue to use your EHIC or Provisional Replacement Certificate (PRC) to access free NHS healthcare if you fall ill or have a medical emergency if you have begun a course of education or training in England before the end of 2020. This will apply until the end of your course.
>
> (…)
>
> **S1 certificate**
>
> Under current rules, an S1 certificate helps you and your dependants to be covered for healthcare when you are living in the UK.
>
> If you are living in England before the end of 2020, your S1 will still be valid in England after that date as long as you continue to be ordinarily resident here.
>
> You may be eligible for an S1 certificate, if you:

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5 NHS webpage for visitors from EU countries, Norway, Iceland, Liechtenstein or Switzerland

6 For further background on the future of the EHIC see BBC Reality Check webpage, Will the EHIC be valid after Brexit?

- have worked and paid contributions in EU countries, Norway, Iceland, Liechtenstein or Switzerland
- receive certain benefits, such as a pension, from EU countries, Norway, Iceland, Liechtenstein or Switzerland

You should apply to the health insurance authority in the relevant country, if you are eligible. You must register your S1 in England to access NHS care in the same way as someone who is ordinarily resident.

During the transition period it is not necessary for an EEA/Swiss citizens living in the UK to demonstrate that they have settled status under the EU Settlement Scheme in order to access the NHS. Those who have started living in the UK by 31 December 2020 will need to apply to the EU Settlement Scheme (before 30 June 2021) in order to secure ordinary residence for the future. After 31 December 2020 EEA/Swiss nationals moving to the UK will need to comply with relevant new immigration rules in order to be ordinarily resident. Detailed guidance can be found in the Department of Health and Social Care's Guidance on implementing the overseas visitor charging regulations (updated February 2020), which also provides the following summary:

> 15. From 1 January 2021, unless the UK and EU reach a further agreement, the healthcare cover of citizens from an EEA country or Switzerland may change and they may become chargeable unless they are accessing a service that would be free of charge for all or an exemption category applies.
>
> 16. EEA/Swiss citizens lawfully residing in the UK by 31 December 2020 will retain their entitlement to healthcare on the same basis as now, ie by being ordinarily resident. They will need to apply to the EU Settlement Scheme in order to secure these rights for the future, and their entitlements will be subject to any future domestic policy changes which apply to UK nationals. Their close family members will also be exempt from charging, even if they arrive after 31 December 2020.
>
> 17. Irish citizens' rights are unaffected by these new arrangements. They can continue to come to the UK to live, work and access care as now.

1.3 Which services are subject to charges under the overseas visitor charging regulations?

NHS (Charges to Overseas Visitors) Regulations 2015 (as amended) create a general rule that providers of certain NHS services must charge overseas visitors (defined as people who are not ordinarily resident in the UK). Under the regulations, charges only apply to secondary care and community care services. However, certain secondary and community care services provided by the NHS are specifically excluded from the charging requirement in the regulations, namely:

- Accident and emergency services, whether provided at a hospital A&E department a walk-in centre or minor injury unit (in respect of services similar to those at a hospital A&E) but not emergency treatment given elsewhere in the hospital;
- family planning services (not including termination of pregnancy);

- treatment of certain communicable diseases, where treatment is necessary to protect the public health[7];
- treatment for a sexually transmitted disease at an STD clinic or on referral from one[8];
- treatment required for a physical or mental condition caused by: torture; female genital mutilation; domestic violence; or sexual violence[9]; and
- compulsory psychiatric services (e.g. treatment given to people detained under the *Mental Health Act 1983*).

The *NHS (Charges to Overseas Visitors) (Amendment) Regulations 2017* excluded two further services from the charging requirement:

- services provided by the NHS 111 telephone advice line; and
- palliative care services provided by charities or community interest companies.

The NHS must always provide immediately necessary or urgent care, including maternity care, to any chargeable patient, regardless of whether or not they have yet paid for that care. The DHSC Guidance on implementing the overseas visitor charging regulations explains that failure to provide immediately necessary treatment may be unlawful under the *Human Rights Act 1998.*[10]

1.4 Which overseas visitors are exempt from charges?

As explained in the previous sections, the requirement to charge overseas visitors applies to NHS secondary care and community health services (with certain exceptions) provided to people who are not ordinarily resident in the UK. The regulations also contain a number of exemptions for people who are not ordinarily resident. These include:

- Non-EEA nationals who have paid the Immigration Health Surcharge (see section 2.4), except in the case of assisted conception services.[11] Children born in the UK to those who have paid the Immigration Health Surcharge are exempt from charge up to the age of three months, providing they have not left the UK since birth.
- Those with an enforceable EU right to free healthcare, including:
  - Someone insured for healthcare in another EEA member state or Switzerland and who, for medically necessary

7 Ibid.: a list of such diseases is provided in chapter 4 of the guidance.
8 From 1 October 2012 HIV treatment is no longer chargeable to any overseas visitors. Before this date only diagnostic tests and associated counselling had been exempt from charge. Department of Health guidance (September 2012) supports the implementation of this change. This follows an earlier commitment from the Government (see HL Deb 29 February 2012 c1398).
9 Except where the overseas visitor has travelled to the UK for the purpose of seeking that treatment.
10 DHSC, Guidance on implementing the overseas visitor charging regulations, February 2020, para 8.2 page 67
11 Since 21 August 2017, NHS assisted conception services are chargeable for people who have paid the Immigration Health Surcharge, unless it is provided in accordance with the armed forces convenant.

treatment, presents a European Health Insurance Card (EHIC) from that member state.[12]

- EEA/Swiss residents referred to the UK for pre-planned treatment with an S2 Form.[13]
- Anyone who has a UK-issued S1 form registered in another EEA member state or Switzerland except for family members of frontier workers.

- Vulnerable patients and those detained, including:
  - Refugees (those granted asylum, humanitarian protection or temporary protection by the UK).
  - Asylum seekers (those applying for asylum, humanitarian protection or temporary protection whose claims, including appeals, have not yet been determined).
  - Asylum seekers and failed asylum seekers who are receiving section 4(2) or section 95 support from the Home Office under the *Immigration and Asylum Act 1999,* or receiving support from a local authority under Part 1 of the *Care Act 2014*.
  - Children who are looked after by a local authority.
  - Victims, and suspected victims, of human trafficking or modern slavery.
  - Anyone in whose case the Secretary of State for Health determines there to be exceptional humanitarian reasons to provide a free course of treatment.
  - Anyone receiving compulsory treatment under a court order or who is detained in an NHS hospital or deprived of their liberty (e.g. under the *Mental Health Act 1983* or the *Mental Capacity Act 2005*), who is exempt from charge for all treatment provided, in accordance with the court order, or for the duration of the detention.
  - Prisoners and immigration detainees.
- UK Government employees and war pensioners, including:
  - UK armed forces members.
  - UK Crown servants who were ordinarily resident prior to being posted overseas.
  - Employees of the British Council or Commonwealth War Graves Commission who were ordinarily resident in the UK prior to being posted overseas.

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[12] The EHIC is a card provided by national healthcare authorities in the 32 EEA countries and gives individuals access to medically-necessary, state-provided healthcare during a temporary stay in any of the 28 EU countries, Iceland, Lichtenstein, Norway and Switzerland, under the same conditions and at the same cost (free in some countries) as people insured in that country.

[13] EEA/Swiss nationals may also be exempt from NHS charges under a different exemption category or by virtue of being ordinarily resident in the UK. The cost of treatment under EHIC or S2 provisions can be claimed back from the country where the patient is resident.

  - Those working or volunteering in employment overseas that is financed in part by the UK Government, who were ordinarily resident in the UK prior to being posted overseas.
  - Those receiving war pensions, war widows' pensions or armed forces compensation scheme payments.
- Those covered by reciprocal healthcare agreements and other international obligations:
  - Anyone entitled to free healthcare in the UK under the terms of a reciprocal healthcare agreement with a country outside the EEA (usually limited to immediate medical treatment).[14]
  - Nationals of states that are contracting parties to the European Convention on Social and Medical Assistance or the European Social Charter and who are lawfully present here and without sufficient resources to pay. Free treatment is limited only to that which cannot wait until the overseas visitor can return home for it, and if the person did not come to the UK for the purpose of seeking treatment.
  - NATO personnel, when the services required cannot readily be provided by armed forces medical services, plus their spouse/civil partner and children under 18 provided they are lawfully present in the UK.

The *NHS (Charges to Overseas Visitors) (Amendment) Regulations 2017* removed the exemption for employees on ships registered in the UK that had previously been in place.

The list should not be taken as a full account of the conditions applying to the exemptions. It is based on the description contained in the DHSC guidance on the charging regulations.[15] Some of these exemptions also apply to the spouse, partner or child of the person concerned although there may also be a requirement that the spouse, partner or child is living with the person in the UK.

An overseas visitor exempt from charges under the charging regulations is normally liable for other statutory NHS charges, such as those for prescriptions, on the same basis as someone ordinarily resident in the UK. However, some charge exempt patients will also be exempt from statutory prescription charges, for example asylum seekers, and will be issued with an HC2 certificate for full help with health costs.[16]

1.5 Former UK residents

The DHSC Guidance on implementing the overseas visitor charging regulations explains that former UK residents who have emigrated and no longer reside in the UK are usually chargeable on visits to the UK. However, it notes that it is important to consider whether the patient is:

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14 For more details including a full list of countries with which the UK holds a reciprocal agreement can be found in chapter 10 of the DHSC, Guidance on implementing the overseas visitor charging regulations (February 2020)

15 DHSC, Guidance on implementing the overseas visitor charging regulations (February 2020)

16 Ibid. para 11.60 page 99

a. still ordinarily resident in the UK or returning to resume properly settled residence in the UK, and, if not,

b. exempt from charge under the Charging Regulations.

The DHSC guidance states that British citizens, EEA nationals and non-EEA nationals with indefinite leave to remain returning to resume properly settled residence in the UK will meet the ordinary residence test (assuming their residence is lawful and voluntarily adopted), most likely from the date of their arrival.[17]

Exemptions under the charging regulations may apply to former UK residents who are not ordinarily resident in the UK but living in countries with reciprocal healthcare agreements with the UK (see Chapter 9 and 10 of the Guidance on the 2015 Regulations for further information).[18]

From 6 April 2015 all UK state pensioners living in an EU/EEA country or Switzerland, who have a valid UK S1 form registered with the local authorities in their country of residence, are entitled to not be charged for NHS hospital services when visiting the UK.[19]

As noted previously, former residents who are working abroad as part of an armed service, as a Crown servant, or in UK Government funded employment abroad may be exempt from charges. Former residents who are war pensioners and armed forces compensation recipients are also exempt from charges while visiting the UK.

1.6 How are the charges administered?

It is the responsibility of the organisation providing the chargeable treatment to identify patients that may be liable for charges. The Department of Health and Social Care (DHSC) recommends that relevant NHS bodies have a designated person, known as an Overseas Visitor Manager (OVM), to oversee the implementation of the charging regulations.[20]

The Government has also announced a range of measures to improve the recovery of costs of migrant and visitor health care. From 6 April 2015 chargeable patients from outside the EEA should be charged 150 per cent of the cost of treatment under new incentives for the NHS to recover costs from visitors and immigrants.

Since 23 October 2017, organisations providing secondary care are required to recover an estimate of the charges in advance of providing any treatment.[21] However, the DHSC guidance on the charging regulations states the requirement to obtain payment upfront should not delay or prevent treatment that is urgent or immediately necessary. The guidance also states that only clinicians can make an assessment as

17 Ibid. para 6.2 page 53
18 Ibid.
19 Ibid. para 9.58 page 81
20 Ibid. page 4
21 Previous DH guidance on the NHS overseas visitor charging regulations was that NHS organisations should charge upfront but this became a legal requirement under the 2017 regulations.

to whether a patient's need for treatment is immediately necessary, urgent or non-urgent.[22]

Patient confidentiality and data sharing

The NHS Constitution for England explains that patients have the right to privacy and confidentiality, the right to expect the NHS to keep patient confidential information safe and secure, and the right to be informed about how their information is used.[23]

Concerns have been raised in recent years about the disclosure of non-clinical patient information to the Home Office for the purposes of investigating immigration offences. A Memorandum of Understanding (MoU) between NHS Digital, the Home Office and DHSC described the information disclosure arrangements.

On 9 May 2018, the Government announced that it would be amending the data request arrangements covered under the MoU. The Government has said this would narrow when the Home Office can request non-clinical information from NHS Digital to very limited circumstances.[24] The MoU, which came into force on 1 January 2017, was formally withdrawn in November 2018. DHSC, the Home Office and NHS Digital continue to work together to agree a new MoU and how future information requests will be made, in line with the announcement of 9 May 2019 and the new data protection regulations.[25]

The DHSC guidance on the charging regulations states that while principles of patient confidentiality are very important there are circumstances in which non-clinical data about a patient can be shared by staff without the patient's consent.[26] The DHSC guidance sets out two main examples where data may be shared with the Home Office:

- for the purpose of determining a patient's immigration status;
- and in relation to those with debts owed to the NHS.[27]

In particular, the Home Office can use information on NHS debts to deny any future immigration application to enter or remain in the UK that the person with the debt might make. Patients do not have to provide their consent before this data is shared but NHS bodies should ensure that patients are aware of the potential immigration consequences of not paying a debt for which they are liable.[28] DHSC

22 DHSC, Guidance on implementing the overseas visitor charging regulations (February 2020), para 8.3
23 NHS England, NHS Constitution for England (July 2015) page 8
24 HC Deb 9 May 2018, cc756-758. Further background can be found in the Library briefing Patient health records and confidentiality (CBP7103)
25 Providers of health services have legal obligations under the GDPR and the *Data Protection Act 2018* in relation to the sharing and storing of a patient's data. Fort further background on data sharing with the Home Office see Public Health England's NHS entitlements: migrant health guide (last updated July 2019)
26 DHSC, Guidance on implementing the overseas visitor charging regulations (February 2020), para 12.1-12.12, pages 104-105
27 Ibid.
28 Ibid. para 12.11 page 105

has published guidance for service providers and overseas visitors on information sharing with the Home Office.[29]

Complaints and appeals

If a patient considers that they have been charged incorrectly, they should discuss this with the hospital Overseas Visitor Manager (OVM) to discuss on what basis they have been found to be chargeable and whether the provision of further documentary evidence is required. The DHSC guidance on the charging regulations provides the following:

> Where a patient feels that they have been charged incorrectly, they should raise this with the hospital Overseas Visitor Manager, and they may be able to claim a reimbursement from the service provider at a later date, if there is sufficient evidence that they were entitled to free treatment at the time. Where there continues to be a disagreement about how the Charging Regulations have been applied to a particular patient, the patient may want to seek the services of the relevant body's Patient Advice and Liaison Service (PALS).[30]

Writing-off debts

While relevant service providers are required to apply the NHS overseas visitor charging regulations there may be certain circumstances where they may decide to write off debts, for example where:

- the NHS chargeable patient has subsequently died and recovery from their estate is impossible; or
- given the NHS chargeable patient's financial circumstances, it would not be cost effective to pursue it (e.g. they are a destitute illegal migrant or are genuinely without access to any funds or other resources to pay their debt); or
- all reasonable steps have failed to recover the debt (e.g. the NHS chargeable patient is untraceable or there are no further practical means of pursuing debt recovery).[31]

29 DHSC, Information sharing with the Home Office for unpaid NHS patient debts: privacy notice, April 2019
30 DHSC, Guidance on implementing the overseas visitor charging regulations (February 2020), para 11.69 page 103
31 Ibid. para 13.74 page 121

2. Developments since 2015

In April 2015, a number of changes were made to the way the NHS charged overseas visitors for NHS hospital care. The changes were made to try to improve the recovery of NHS costs of migrant and visitor health care, as set out in the Government's 2014 Visitor and Migrant NHS Cost Recovery Programme Implementation Plan.

In particular, a new set of charging regulations were published in 2015, taking effect on 6 April 2015. 2015 also saw the introduction of the Immigration Health Surcharge for non-EEA nationals applying for a visa to live in the UK. The 2015 regulations were subsequently amended in 2017. The 2017 regulations made further changes to the exemption categories for chargeable patients and services, and the way in which charges were administered.[32]

2.1 Visitor and Migrant NHS Cost Recovery Programme

In July 2014 the Government announced a series of measures to improve the recovery of costs of migrant and visitor health care. The Visitor and Migrant NHS Cost Recovery Programme Implementation Plan (2014) outlined four phases of work:

> Phase 1 – Improving the existing system
>
> Improves existing systems; develops and delivers financial incentives, encourages sharing of best practice, provides for a training curriculum for NHS staff, and establishes a cost recovery support team to deploy to NHS trusts.
>
> Phase 2 – Aiding better identification of chargeable patients
>
> Works with delivery partners to make changes to our existing identity verification mechanisms and registration processes within the NHS (primary and secondary care).
>
> Phase 3 – Implementing the health surcharge
>
> Delivers legislative change to support the introduction of the health surcharge (introduced through the Immigration Act 2014) and possible amendment of existing exemptions.
>
> Phase 4 – Extension of the current charging
>
> Reviews current overseas visitor charging rules and explores extending the scope of charging in secondary care, and the possibility of introducing charging in certain primary care settings.

The Department of Health's *2015 to 2020 Shared Delivery Plan* set a target of recovering up to £500 million per year overseas patients by the end of 2017/18.

2.2 2015 charging regulations

A new set of charging regulations were published in 2015, taking effect on 6 April 2015. These regulations made significant changes to the

[32] See the DHSC online guidance, How the NHS charges overseas visitors for NHS hospital care (February 2020)

exemption categories for chargeable patients and services, and the way in which charges were administered. A Department of Health press release on the 2015 charging regulations provided further information, and noted that from 6 April 2016:

- Non-EEA nationals who are subject to immigration control must have the immigration status of indefinite leave to remain (ILR) at the time of treatment and be properly settled, to be considered 'ordinarily resident'.
- UK state pensioners who live elsewhere in the EEA have the same rights to NHS care as people who live in England. This applies to all pensioners who receive a UK state retirement pension and registered for healthcare in Europe with an S1 form
- Individuals living outside the EEA will be charged 150% of the cost of NHS treatment for any care they receive, unless they are exempt.[33]

Financial incentives to identify chargeable patients

As part of the Department of Health's cost recovery programme it introduced financial incentives to support the NHS in identifying chargeable visitors and migrants using the NHS. These incentives were intended to recognise the administrative and financial burdens that can face bodies providing NHS services in the recovery process, and aimed to counterbalance these.

The 2015 charging regulations introduced a new financial incentive to increase the level of cost recovery from chargeable patients from outside the EEA. From 6 April 2015 NHS providers in England can bill chargeable non-EEA patients at a rate of 150 per cent of standard NHS tariff for the cost of the care provided.

The Department has said it will keep the rates of the incentives under review to ensure that it is effective and is driving change. The Department of Health press release on the 2015 charging regulations provided the following:

> People living outside the EEA
>
> People who live outside the EEA, including former UK residents, should now make sure they are covered by personal health insurance, unless an exemption applies to them. Anyone who does not have insurance will be charged at 150% of the NHS national tariff for any care they receive.[34]

On 1 October 2014 the Department of Health also introduced a new financial incentive for hospitals to improve their reporting of EEA patients through the EHIC scheme, in order to improve cost recovery. The new financial incentive is paid to NHS trusts who improve EHIC reporting, in order to compensate them for the administrative tasks involved in recording EHIC details from EEA patients.

The Visitor and Migrant NHS Cost Recovery Programme Implementation Plan (2014) also proposed sanctions, whereby a fine would be levied

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33 DH press release, New rules to improve overseas visitors' contributions to NHS care, 16 February 2015

34 Ibid.

against a provider if they are found to be failing to identify chargeable patients.

These sanctions were introduced in April 2015, and allow for Clinical Commissioning Groups (CCGs) to withhold payment for services if an NHS trust had failed to take reasonable steps to identify and recover charges from a patient. This provision was also included in the NHS Standard Contract.[35] Financial sanctions and incentives are intended to act in unison to drive behavioural change from both sides.

Despite the incentive and sanction regime, a 2016 report from the National Audit Office identified significant variation between NHS trusts:

> In 2015-16, just 10 trusts, all in London, accounted for half of the total amount charged to visitors from outside the EEA. Ten trusts, distributed more widely across the country, accounted for more than a quarter of the total amount reported through the EHIC scheme for EEA patients. In 2015-16, eight of the 154 acute and specialist trusts did not charge any patients from outside the EEA at all, and 22 reported no EEA patients through the EHIC scheme. Our analysis indicates that the variation cannot be fully explained by factors such as trust size, type and region.[36]

2.3 2015 consultation on the extension of charging overseas visitors

On 7 December 2015, a consultation was launched on the extension of charging overseas visitors and migrants, covering the following areas:

- Primary Medical Care
- NHS Prescriptions
- Primary NHS Dental Care
- Primary NHS Ophthalmic Services (Eye Care)
- Accident and Emergency (A&E)
- Ambulance Services
- Assisted Reproduction
- Non-NHS providers of NHS Care and Out-of-Hospital Care
- NHS Continuing Healthcare
- EEA National's residency definition
- Overseas visitors working on UK-registered ships[37]

Following the consultation, changes were made to the regulations on the proposals related to overseas visitors on UK-registered ships, non-NHS providers of NHS care and out-of-hospital care, and assisted reproduction services.

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35 Ipsos MORI, Overseas Visitor and Migrant NHS Cost Recovery Programme, January 2017, page 21

36 National Audit Office, Recovering the cost of NHS treatment for overseas visitors, 28 October 2016, HC 728 2016-17, page 8

37 HC Deb 7 December 2015, HCWS360

In light of the 2016 EU Referendum, and ongoing Brexit negotiations, the Government decided not to proceed with any of the proposed changes to residency definitions for EEA nationals.

The Government's response to the consultation, published in February 2017, also confirmed the Government's intention to extend charges to primary care at a later date, when further contractual and legislative changes could be made.[38] This would mean that GPs would become responsible for identifying when a patient is chargeable, and overseas visitors who previously qualified for free prescriptions, dental care and optical vouchers (for example due to their age), would subsequently have to pay the standard charge for these services.

The Government's response to the consultation stated that GP and nurse consultations will remain free for overseas visitors. It said this was due, in part, to concerns about the detection and prevention of infectious diseases:

> **Opinion on the proposal to retain free GP/nurse consultations for all**
>
> Support for this proposal was widespread, but not without some opposition that it would mean the UK remained overly generous. There was much recognition that seeing GPs is an effective way to ensure that infectious diseases and other public protection issues are identified, so that this was often supported both by those who were opposed to other services becoming chargeable and those who were not. One organisation said, 'Maintaining free GP and nurse consultations to all is a sensible measure to ensure that opportunities to identify infectious disease during routine consultations are not lost'.
>
> However, some felt there was no need for all consultations to be free of charge to all in order to protect the public. One organisation said they agree 'that the initial consultation should be free to comply with public protection requirements, but believe subsequent visits should incur charges, unless the presence of infectious disease or sexual health infection has been diagnosed.' Another respondent said: 'we feel that initial GP consultations should remain free to all, however Nurse Consultations should be chargeable.'[39]

Other consultation respondents felt that charges for GP services would mean many patients with irregular immigration status may not seek any medical help, and this could be particularly detrimental for children and those in need of maternity care.

The Government's February 2017 consultation response also stated that it was still considering its proposal to extend charging for overseas visitors to services provided at A&E units (or similar services).[40]

The original consultation argued that current exemptions on charges for A&E services can cause confusion for patients, and that the UK is an

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38 DH, Making a fair contribution: Government response to the consultation on the extension of charging overseas visitors and migrants using the NHS in England, 6 February 2017

39 Ibid. page 44

40 Ibid.

outlier in not charging for these services. However, the Government's response acknowledged some concerns from consultation respondents:

> A number of respondents had concerns about the practicalities of charging in such a high-pressure environment and the potential delays to necessary treatment as eligibility was established. Concerns were also raised about people choosing not to call an ambulance or go to A&E through fear of charging.[41]

2.4 The immigration health surcharge for non-EEA migrants

The *Immigration Act 2014* provides for non-EEA/Swiss temporary migrants (those subject to immigration control who do not have indefinite leave to remain – generally speaking, people who come to the UK as workers, students or family members) to pay an Immigration Health Surcharge. The Act also adopts a revised definition of qualifying residence, with non-EEA/Swiss migrants required to be current residents with indefinite leave to remain in order to be eligible for free NHS hospital treatment.[42]

From 6 April 2015 temporary migrants coming to the UK for six months or more from outside the EEA/Switzerland have been required to pay the Immigration Health Surcharge in addition to the immigration application fee (unless exempt, or payment is waived). Payment of the health surcharge entitles the person to free NHS services on the same basis as an ordinarily resident patient while their visa remains valid.[43]

Non-EEA/Swiss nationals who have indefinite leave to remain in the UK and are ordinarily resident here are not required to pay the health surcharge. Non-EEA/Swiss nationals who are visiting the UK for six months or less including on a multiple entry visa, or who are in the UK without permission, must be charged for services they receive at the point of accessing care, unless exempt from charges under other categories of the 2015 charging regulations.

The Immigration Health Surcharge was originally set at £200 per person per year (and £150 per year for students), payable upfront at the point of applying for immigration permission, and for the total period of time for which migrants and their dependants are seeking permission to stay in the UK. Refunds are available if the immigration application is withdrawn or refused. In setting the surcharge levels, the Government considered the range of free health services available to migrants alongside the contribution they make. As of the 8 January 2019 the health surcharge increased to £400 per person per year, with a discounted student rate of £300 per year. It is scheduled to increase again in October 2020, to £624 per year (£470 for certain visa

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41 Ibid. page 10

42 Further information on the health provisions in the Immigration Bill can be found in the Library Research Paper RP13-59 (17 October 2013).

43 With the exception of assisted conception services, which since August 2017 are no longer available for free to overseas visitors who have paid the immigration surcharge. Guidance for healthcare staff on how to identify where people have paid the Immigration Health Surcharge can be found in Chapter 5 of DHSC, Guidance on implementing the overseas visitor charging regulations (December 2018)

categories). It will also apply to EEA nationals moving to the UK after the Brexit transition period.

The proceeds of the charge will go directly from the Home Office to the health departments in England, Scotland, Wales and Northern Ireland. The Government has estimated that the charge could raise as much as £1.7 billion additional funding for the NHS over 10 years.[44]

A 2016 report by the National Audit Office found that in the first year of the immigration surcharge (2015/16), it raised an additional £164 million for the NHS across the UK.[45] A PQ response in November 2018 noted that the surcharge has delivered over £600 million in additional funding to the NHS in the three years since its introduction in 2015.[46]

Further information is provided in the Library briefing The Immigration Health Surcharge.

2.5 2017 amendments to the regulations

The *NHS (Charges to Overseas Visitors) (Amendment) Regulations 2017* brought in a number of amendments to the charging requirements introduced by the 2015 regulations, with changes taking effect in August and October 2017. These included:

- All organisations that provide eligible NHS services, not just NHS bodies, are now responsible for charging patients;
- Removal of the exemption of secondary care services provided outside of a hospital setting – such as community health services. These are now included in the charging requirements;
- NHS providers of chargeable services to recover an estimate of the costs upfront (except where this would delay or prevent the provision of urgently necessary treatment);
- Palliative care provided by charities or community interest companies to be exempted from the charging requirements;
- NHS 111 services to be exempted from the charging requirements;
- Overseas visitors who have paid the immigration surcharge to be charged for assisted conception services;
- Removal of the exemption for workers on UK-registered ships (although the ship-owner is liable for paying any NHS charges);
- NHS trusts and foundation trusts are required to record when a person is an overseas visitor against their NHS number.

On 16 November 2017, DHSC announced it would be conducting a review into the impact of amendments made to the NHS charging

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44 A Home Office press release (March 2015) provides more background on the introduction of the health surcharge on 6 April 2015 (see also the Lords debate on the introduction of the 2015 charging regulations: HL Deb, 10 March 2015, GC197)

45 National Audit Office, Recovering the cost of NHS treatment for overseas visitors, 28 October 2016, HC 728 2016-17, page 4

46 HL11198, Immigrants: Health Services, 14 November 2018

regulations in 2017, with particular regard to any impact on vulnerable groups and those with protected characteristics.

On 12 December 2018 a DHSC Written Statement confirmed the review was complete, and that "…the evidence received demonstrated that there is no significant evidence that the 2017 Amendment Regulations have led to overseas visitors being deterred from treatment or that the changes have had an impact on public health." The Written Statement noted that although maternity treatment "…must always be regarded as immediately necessary, and therefore not subject to the upfront charging requirement, some evidence suggested that overseas visitors may not always be aware of this." The Department therefore committed to develop "user-friendly, culturally-appropriate guidance", to clarify that maternity treatment is never subject to the upfront charging requirement, and to ensure this reaches those who may be impacted. The DHSC's updated national guidance (published on 24 December 2018) also clarified that termination of pregnancy services are to be regarded as urgent, and therefore not subject to the upfront charging requirement, where the overseas visitor cannot reasonably be expected to leave the UK before the date which an abortion may no longer be a viable option.[47]

The Statement also noted that, as a result of the 2017 amendment regulations some community midwifery services had become chargeable. The Statement explained that as community midwifery services were already chargeable if delivered by hospital employed or directed staff, "the removal of the exemption was important in ensuring that charging rules apply in a fair and consistent manner, regardless of where a service is provided."[48]

Following the Written Statement there was an exchange of correspondence between the Chair of the Health and Social Care Committee and the Secretary of State for Health and Social Care about the review of the 2017 regulations. The Committee called for the publication of the review, which the Department refused to do on the grounds that some evidence was submitted on the basis it would not be published.[49]

On 25 June 2019 the Committee took evidence from the then Minister of State for Health, Stephen Hammond, about NHS overseas visitor charging. This evidence session focussed on a Government review of the changes made by the 2017 regulations, with the Minister confirming that this review was not intended for publication.[50]

47 DHSC Written Ministerial Statement (HCWS1174), Review of amendments made to the NHS Overseas Visitor Charging Regulations in 2017, 12 December 2018

48 Ibid.

49 Health and Social Care Committee webpage, Health and Social Care Committee invites Secretary of State to justify refusal of information, 5 June 2019

50 Health and Social Care Committee webpage, Government's review of NHS overseas visitor charging inquiry

2.6 Criticism of NHS overseas visitor charges

There have been calls from a number of national bodies representing doctors, and organisations campaigning on migrant rights, for NHS overseas visitor charges to be suspended or abolished, amid criticism that they are harmful and unfair. There are also concerns that some vulnerable patients have been charged incorrectly or had their treatment delayed, with a number of cases highlighted in the media.[51]

In March 2019 the Academy of Medical Royal Colleges (AMRC) issued a statement supporting the suspension of the NHS charging regulations pending a full and independent review of the impact on both individual and public health. The AMRC also supported calls for a clear separation of roles between immigration enforcement activities and the provision of healthcare.[52]

The British Medical Association (BMA) published a report in April 2019, Delayed, deterred, and distressed: The impact of NHS overseas charges, which called for a full and independent review into the impact of the 2017 charging regulations on individual and public health. The BMA report stated that the 2017 amending regulations are deterring vulnerable groups from accessing NHS treatment, threatening public health, and taking doctor's time away from patient care. On 25 June 2019 the Guardian reported that the BMA's annual representative's meeting had called for NHS overseas visitor charges to be abolished.[53]

In September 2019 the charity Maternity Action released a new report, Duty of Care? The impact on midwives of NHS charging for maternity care. The report stated that although migrant women are not required to pay in advance for maternity care, the NHS charging regulations deter some from engaging with services. The report also identified three main issues for midwives:

- They face conflicts in their professional practice as a result of charging
- They experience an increased workload due to women's responses to charging
- They find themselves having to deal with ethical dilemmas about how far they need to engage with the charging regime

The Department responded that while it had no plans to suspend overseas visitor charges for maternity care it is "committed to considering evidence it receives in relation to the Regulations, including evidence set out in the report." The Department also emphasised that all maternity treatment must be provided to any chargeable woman, regardless of her ability to pay, and that they must not be discouraged from receiving it.[54]

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51 See for example, the Guardian, Asylum seeker denied cancer treatment by Home Office dies, 19 September 2019

52 Academy of Medical Royal Colleges, NHS charges to overseas visitors regulations - Academy statement, 14 March 2019

53 The Guardian, Scrap upfront NHS charges for migrants, says BMA, 25 June 2019

54 PQ 598, Health Services: Foreign Nationals, 22 October 2019

The Department has published some specific guidance for NHS organisations about groups that might be at risk of being incorrectly charged under the overseas charging regulations. For example, in October 2018, DHSC published guidance specifically considering the 'Windrush generation'.[55]

In April 2020 a number of MPs urged the Government to suspend NHS overseas visitor charges and immigration checks during the coronavirus crisis, and have warned that undocumented migrants are dying at home because they are afraid to seek medical care.[56]

The Library briefing The Immigration Health Surcharge also notes that in the context of the coronavirus pandemic there have been calls for the Government to abolish the charge for all NHS workers. Speaking during the daily coronavirus update on 25 April 2020, the Home Secretary indicated that the Immigration Health Surcharge (IHS) was one of a range of measures that the Home Office was keeping under review. Some NHS and care workers whose visas are due for renewal before October 2020 have been (temporarily) exempted from paying the IHS.[57]

55 DHSC, Windrush generation' guidance for NHS staff and NHS care providers, 31 October 2018. This provides guidance on establishing entitlement to NHS-funded secondary care when patients are part of the 'Windrush generation' or may not have immigration documents readily available. The guidance states that 'Windrush generation' refers to the Commonwealth citizens who settled in the UK before 1 January 1973 and those who arrived to live here between 1973 and 1988. It should be read with the main guidance on implementing the overseas visitor regulations.

56 See EDM 357 2019-21, Healthcare charges for migrants (tabled 22 April 2020); and the Guardian, MPs urge government to suspend NHS immigration checks, 18 April 2020

57 The Guardian, Calls grow to scrap NHS surcharge for migrant healthcare workers, 3 May 2020

3. Earlier developments

3.1 2010 consultation on immigration sanctions for those with unpaid NHS debts

In February 2010 the Home Office ran a consultation on proposals to withhold access to the UK where a visitor has an outstanding material debt for NHS treatment.[58] Following consideration of the issues raised by respondents to these consultations, in March 2011 the Government announced they would amend the immigration rules to allow a person with an outstanding debt to the NHS of £1,000 or more to be refused a new visa or extension of stay until the debt is paid (this came into force on 31 October 2011).[59]

3.2 2012 review of overseas charging regulations

In May 2011 the Government announced it would undertake a fundamental review of the rules and practices around charging overseas visitors, including reviewing the procedures to screen for eligibility and to make and recover charges. In announcing the review, the then Health Minister Anne Milton stated that:

> ...it is increasingly clear that the overall charging regime is neither balanced nor efficient. Overall entitlement to free healthcare, through residency or other qualifying exemptions, is often more generous to visitors and short-term residents than is reciprocated for UK citizens seeking treatment in many other countries. Charging regulations only cover hospital treatment, so visitors may receive free primary care and other non-hospital-based healthcare services. Although hospitals have a statutory duty to enforce the regulations, effective enforcement by hospitals appears to vary considerably.
>
> For these reasons we believe that a further fundamental review of the current policy is needed.[60]

The 2012 Review of overseas visitors charging policy found that there were significant weaknesses in the rules for charging overseas visitors, in systems for identifying chargeable patients, and in the recovery of charges. The review's findings and recommendations were published in July 2013, alongside two linked consultation documents about overseas visitors' access to the NHS.[61]

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58 Home Office, Consultation on Refusing Entry or Stay to NHS debtors. A Public Consultation around Proposed Changes to the Immigration Rules, February 2010

59 HC Deb 18 March 2011 c36-7WS

60 HC Deb 18 March 2011 c35-6WS

61 DH, Sustaining services, ensuring fairness: a consultation on migrant access and their financial contribution to NHS provision in England, and Home Office, Controlling Immigration – Regulating Migrant Access to Health Services in the UK, both published 3 July 2013.

3.3 2013 consultations on migrant access to the NHS

In July 2013 the Home Office and Department of Health published two linked consultations about migrant access to the NHS, asking who should be charged in future, what services they should be charged for, and how to ensure that the system was better able to identify patients who should be charged.

The Government's response to the consultation was published in December 2013[62] and the Department of Health then worked to design and implement key improvements through its Visitor and Migrant NHS Cost Recovery Programme (see section 2.1).

Most responses to the July 2013 consultations accepted that there was a need to protect the public purse by limiting access to healthcare in some circumstances and preventing the deliberate misuse of scarce resources. However, a number of responses highlighted concerns about the lack of evidence to justify the proposals. For example, responses submitted by National Voices (coordinated by National Voices' member, the African Health Policy Network) raised concerns about the Government's lack of evidence of the scale or financial impact of 'health tourism'.

62 DH, Sustaining services, ensuring fairness: Government response to the consultation on migrant access and financial contribution to NHS provision in England, December 2013

4. The extent and cost of NHS use by non-residents

The Department of Health's 2012 Review of overseas visitors charging policy commented on the lack of detailed evidence on the extent of NHS use by non-residents and the cost to the NHS, although a summary of the limited evidence available was still presented.[63] The 2012 review provided the following conclusions while acknowledging the high degree of uncertainty around the analysis due to the weakness of the evidence base:

- The NHS appears to be recovering gross income of £15-25 million for treatment provided to chargeable visitors and non-residents.
- This represents less than 20% of estimated chargeable costs.
- This low recovery is accounted for by only 30% - 45% of chargeable income being identified, and 60% of the charges levied not being recovered.
- Administering the current system (in NHS hospitals) may be costing over £15 million, suggesting that the overseas visitor charging system may at best be generating a small net gain and possibly none at all.[64]

The review found that while improved practices could increase both identification and recovery from the current very low levels, the circumstances of the main chargeable groups and inherent process weaknesses limit the potential improvement.[65]

The review team estimated that if all currently chargeable overseas visitors were identified, they would expect chargeable income to increase by £45-115 million. However, given the low recovery rate, they said it is unlikely that this would generate more than £20-50 million of recovered income. The review went on to state that more significant revenue could be realised by charging some or all of those currently exempt although it highlighted there would still be significant problems facing the NHS in identifying and charging a small subset of patients for their treatment.[66]

The 2012 review noted that the power to charge those not ordinarily resident has only been enacted for secondary care in NHS hospitals (and not other new providers of NHS-funded services), although this has been changed with the 2017 amendments to the regulations.

The review team estimated that the total yearly healthcare cost of non-EEA temporary residents and visitors to be around £1 billion (at the time

63 DH, Sustaining services, ensuring fairness: Evidence to support review 2012 policy recommendations and a strategy for the development of an Impact Assessment, July 2013
64 DH, 2012 Review of overseas visitors charging policy: Summary report, April 2012 (published July 2013), para 78
65 Ibid. para 79
66 Ibid. para 85-86

of the review in 2012).[67] The 2012 review found that services exempted from charges, such as primary care, comprised around 40% of NHS treatment expenditure of non-EEA visitors (at the time of the review). However, the review found that practical operational issues and related administrative costs would however limit the scope to extend charges to primary medical services. The review also drew this final conclusion about overseas visitors charging policy:

> Although there may be good policy reasons, and potentially significant income opportunities in extending the scope of charging, the NHS is not currently set up structurally, operationally or culturally to identifying a small subset of patients and charging them for their NHS treatment. Only a fundamentally different system and supporting processes would enable significant new revenue to be realised.[68]

In October 2014, the Government published a Quantitative Assessment of Visitor and Migrant Use of the NHS in England. The research found that that EEA visitors and non-permanent residents cost the NHS about £305 million, of which £220 million is recoverable under the EHIC scheme. The Department of Health accounts for 2012/13 show that only about £50 million was recovered from EEA countries. The report also stated that the £50 million the UK recovers "is less than is paid out for British visitors to EEA countries, namely £173 million."[69]

NHS costs recovered from overseas visitors

The Department of Health's 2015 to 2020 Shared Delivery Plan (February 2016) noted the Government's target of recovering up to £500 million per year overseas patients by the end of 2017/18. In February 2017 the Government published a report by the market research company Ipsos MORI evaluating the overseas visitor and migrant NHS cost recovery programme.[70] The Ipsos MORI report found that despite some positive progress (total cost recovery for 2015/16 at 58% of the ambition for the Cost Recovery Programme overall) significant further progress would be required in order to meet this ambition to recover £500 million by 2017/18.

A PQ response in May 2017 set out the total income identified from chargeable overseas visitors receiving NHS treatment since 2013/14.[71] A PQ response on 8 October 2019 stated that cost recovery from chargeable overseas visitors has raised over £1.3 billion since 2015, with the total amount identified in 2018/19 at £464 million. The Government has also announced £1 million funding to expand a team of NHS experts whose role is to assist and support NHS organisations to understand the cost recovery rules and ensure they are applied fairly

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67 Ibid. para 90-91
68 Ibid. para 92
69 Prederi, Quantitative Assessment of Visitor and Migrant Use of the NHS in England, October 2014, page 87
70 Ipsos MORI, Overseas visitor and migrant NHS cost recovery evaluation, 6 February 2017. See also: National Audit Office, Recovering the cost of NHS treatment for overseas visitors, 28 October 2016, HC 728 2016-17
71 PQ 252536, Health Services: Foreign Nationals, 15 May 2019

and consistently. The PQ response also noted that the Immigration Health Surcharge generates over £400 million per year.[72]

Since 2017, chargeable patients seeking to access treatment that is not urgent or immediately necessary are required to pay upfront and in full before they receive the treatment.

72 PQ 293582, Health Service: Foreign Nationals, 8 October 2019

5. GP services and charges for overseas visitors

GP services are excluded from the overseas visitor charging regulations, however, chapter 11 of the DHSC guidance on the implementation of the charging regulations sets out some information on GPs and primary care.[73] Some key points are set out below:

- Anyone in England, including overseas visitors, can register as an NHS patient and consult with a GP without charge.
- There is no minimum time that someone must have been in the UK to register with a GP.
- GPs have some discretion to refuse to register patients, but this cannot be on the grounds of race, gender, class, age, religion, sexual orientation, appearance, diversity or medical condition.
- GPs have a duty to provide free treatment which they consider to be immediately necessary or in an emergency, including to overseas visitors.
- It is the responsibility of the body providing chargeable NHS services to identify chargeable patients, not the responsibility of the GP.
- Hospital Overseas Visitor Managers (OVMs) should consider establishing formal contacts with GPs to help identify chargeable patients in advance of admission for chargeable treatment.[74]

Since July 2017, GPs are required to provide all new patients with the revised GMS1 form, which includes a section for patients to self-identify as eligible for NHS charges, or to identify themselves as an EHIC holder or a patient with an exemption from the charging requirements.

The Government's 2012 review of the rules and practices around charging overseas visitors, and the subsequent Department of Health consultation in 2013, considered charging for GP services, amongst others.[75] However, in its response to the consultation, the Department of Health said that in the interest of public health, it has no intention of making GP and nurse consultations in primary care chargeable for patients who would not otherwise be eligible for free NHS treatment.

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73 DHSC, Guidance on implementing the overseas visitor charging regulations (updated December 2018), paras11.52 to 11.57

74 Ibid. See also: Public Health England's NHS entitlements: migrant health guide (last updated July 2019), which also provides information on migrant access to GP services.

75 On 3 July 2013 the Government published two consultations about overseas visitors' access to the NHS. Sustaining services, ensuring fairness: a consultation on migrant access and their financial contribution to NHS provision in England, and Controlling Immigration – Regulating Migrant Access to Health Services in the UK ask who should be charged in future, what services they should be charged for, and how to ensure that the system is better able to identify patients who should be charged. The consultation period closed on 28 August 2013. See also HC Deb 18 March 2011 c35-6WS. In 2004 the previous Labour Government issued a consultation document which raised the possibility of introducing regulations for GP services along lines similar to those for hospitals, Proposals to Exclude Overseas Visitors from Eligibility to Free NHS Primary Medical Services. In July 2009, the Government announced that it did not believe that any specific changes in respect of foreign nationals were required to the arrangements governing GP practices.

This includes people who are illegally in the UK or on temporary visitor visas.[76]

Although in its response to the 2015 consultation the Government committed to introducing changes to the charging rules for primary care more generally, the same outcome as in 2013 was decided upon with regards to retaining free GP consultations.

There have been a number of reports that some GP practices have refused to register patients who are unable to provide ID documents or proof of address, and concerns that this can deny care to recent migrants and other vulnerable patients.[77]

The Public Health England guide to NHE entitlements for migrants provides the following information:

> NHS guidance clearly outlines that a practice cannot refuse a patient because they do not have identification or proof of address.
>
> Where a patient applies to register with a general practice and is subsequently turned down, the GP must nevertheless provide, free of charge, any immediately necessary treatment that is requested by the applicant for a period of up to 14 days (this can vary according to circumstances).
>
> If a GP practice refuses to register a patient the practice must notify the applicant, in writing, of the refusal and the reason for it, within 14 days of its decision.
>
> The Standard General Medical Services Contract and the National Health Service (General Medical Services Contracts) regulations 2004 explain this requirement.
>
> Where a person has difficulty in registering for National Health Services with a primary medical services contractor, they can contact:
>
> their local NHS England area team directly
>
> the local Patient Advice and Liaison Services
>
> These services can discuss what help is available locally.[78]

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76 DH, Sustaining services, ensuring fairness: Government response to the consultation on migrant access and financial contribution to NHS provision in England, December 2013

77 See for example, Hodson, A., Ford, E., and Cooper, M., Adherence to guidelines on documentation required for registration to London GP practice websites: a mixed-methods cross-sectional study, British Journal of General Practice 2019; 69 (687): e731-e739

78 Public Health England, NHS entitlements: migrant health guide (last updated 27 April 2020)

6. NHS overseas charging rules applying to other parts of the UK

In general, health policy is a devolved matter and there is separate guidance relating to NHS overseas charging rules in Wales, Northern Ireland and Scotland. However the devolved administrations currently retain a broadly similar framework of regulations on charging visitors. The guidance on charging for overseas visitors in Scotland can be found here, the guidance for Wales here, and the guidance for Northern Ireland here.

The UK Government has responsibility for immigration matters and the health provisions in the *Immigration Act 2014*, including the health surcharge, apply across the UK. The UK Government has said that proceeds of the surcharge will go directly from the Home Office to the health departments in England, Scotland, Wales and Northern Ireland.[79]

[79] A Home Office press release (March 2015) provides more background on the introduction of the health surcharge on 6 April 2015 (see also the Lords debate on the introduction of the 2015 charging regulations: HL Deb, 10 March 2015, GC197)

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