

# ILPA information sheet

---

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at [www.ilpa.org.uk](http://www.ilpa.org.uk) provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at [www.ilpa.org.uk/infoservice.html](http://www.ilpa.org.uk/infoservice.html)

Immigration Law Practitioners' Association [www.ilpa.org.uk](http://www.ilpa.org.uk) 020-7251 8383 (t) 020-7251 8384 (f)

---

## Access to Healthcare 5: Regulating Access to free health services: Consultations

30 July 2013

On 3 July 2013, the Home Office and the Department of Health launched consultations on provisions in the forthcoming Immigration Bill which the Government states are aimed at protecting public services by restricting access to publically funded health services. It is proposed that, in future, people not identified as exempt from paying would have to pay for most National Health Services (irrespective of who provides the service or where the services are provided). A new "residency" test would be used.

The Home Office consultation, 'Controlling immigration – Regulating Migrant Access to Health Services in the UK' can be found here:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/34-healthcare/>

And, the Department of Health, 'Sustaining services, ensuring fairness: A consultation on migrant access and their financial contribution to NHS provision in England' can be found here:

<https://www.gov.uk/government/consultations/migrants-and-overseas-visitors-use-of-the-nhs>

### Responding to the consultation

You may respond to the consultations online or by writing to the address stated on the Home Office/Department of Health web pages. The response deadline is 28 August 2013 for both.

### The proposals in brief

#### Which services?

The Government is proposing to extend the existing arrangements for charging certain people in the UK for NHS health services to cover all clinical (hospital) services and to include primary medical care (e.g. General Practitioners (GPs)). Treatment for certain infectious diseases, such as tuberculosis and sexually transmitted diseases would still be free.

#### Who pays?

Powers presently exist to charge for National Health services. Those not 'ordinarily resident' in the UK may be charged for secondary care services. 'Ordinary residence' is a difficult concept and involves looking at an individual's current situation and his/her intentions. In practice, people with limited leave for more than six months are likely to meet the ordinary residence test.

The new charging arrangements will apply to **ALL**<sup>1</sup> those seeking to access health care services (including British nationals living overseas) who do not satisfy a new 'residency test' and/or do not fall within an exempt category. Proposed exempt categories include, for example, those recognised

---

<sup>1</sup> Annexe B to the consultation document identifies "Resident British nationals" - for whom there will be "(n)o change - will continue to have automatic entitlement to free NHS services and will not be subject to extensive entitlement checks and challenges" but how are they to be identified without such checks and challenges?

as refugees, asylum seekers, trafficked persons and persons from countries that have reciprocal health agreements with the UK.

The greatest impact will be on non-EEA nationals. Non-EEA nationals with permanent residence (Indefinite Leave to Remain or 'No Time Limit') will continue to have access to free health care.

For those who do not satisfy the new residence test, the government sets out two options:

- (i) 'enrolment' for access to National Health services by paying a charge ('a migrant health levy') which would entitle them to access for free most National Health services; or
- (ii) A requirement to take out private health insurance.

### **Levy/charging options**

#### **i. Migrant Health Levy**

One proposal is that people with limited leave would pay a levy to access all National Health services to cover the period of their leave. Payment of the levy would be a condition of receiving leave to enter or remain in the UK. The whole levy would be paid up front in the same way the applicant pays a visa fee. The Biometric Residence Permit would be endorsed to show they are entitled to free NHS treatment.

Migrants in Tiers 1 to 5 and their dependants, and family migrants would be liable to pay the fee. The government is also considering whether the requirement to pay the levy should extend to those who extend their leave in the UK, or to those given including limited leave on the basis of their family or human rights, and to those granted immediate settlement on the basis of their family life.

The proposed level of fee is a flat rate of £200 for each year of leave granted but the government is consulting on the possibility of a higher fee

The levy might not entitle access to all National Health services, for example, 'discretionary' treatments such as In Vitro Fertilisation (IVF) and cosmetic surgery.

#### **ii Requirement to have health insurance**

An alternative proposal is that temporary migrants would be required to hold health insurance, possibly as a condition of leave to enter/remain. The Government considers the main advantages of this option to be:

- The temporary migrant has freedom to choose the level of care covered;
- Temporary migrants would more likely access private health care;
- The taxpayer would still be underwriting the levy option but not so the insurance option where costs and risk are on the migrant.

### **British nationals living overseas and those with a 'long term relationship with the UK'**

The Government is proposing that those with a 'long term relationship with the UK' may not be charged for National Health services. It is proposed that this 'long term relationship' can be shown by a number of years (seven is suggested) National Insurance contributions.

### **ILPA's concerns**

The Government already has a charging system which is not properly resourced and administered. These proposals are based on anecdotal claims of 'health tourism' which in turn are fuelled by racist stereotypes of migrants abusing Britain's universal and free National Health Service. The Government has put forward no reliable evidence to support its position and we know of none. The proposals are discriminatory and unworkable.