The Refugee Council's response to the Department of Health consultation paper:

"Proposed Amendment to the NHS Regulations (Charges to Overseas Visitors) 1989"

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About the Refugee Council

The Refugee Council is the largest charity in the UK providing help and advice to asylum seekers and refugees. We also work with them to ensure that policy makers address their needs and concerns.

Introduction

In its consultation paper "Proposed Amendment to the NHS Regulations (Charges to Overseas Visitor) 1989", the Department of Health is proposing to stop free hospital care for failed Asylum seekers. The Refugee Council believes that this proposal raises *serious concerns.*

The Refugee Council's response to the Consultation concentrates on the impact of the proposal "to end access to inpatient treatment for asylum seekers whose applications have been rejected and have no legal right to be in the country."

1. Health as a fundamental right

Good health is a fundamental right. Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises the "the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health". Inadequate access to health services will impact not just on an individual's quality of life and self-development but also on the collective health of the community.

2. Refugees' specific health needs

Refugees can suffer a range of health problems relating to their experiences of war, political persecution, torture and imprisonment and the conditions of flight from their country of origin. Their state of health can also be affected by destitution, prolonged separation from family members, difficulties with cultural adaptation and lack of perspective of one's future during lengthy asylum determination procedures. A recent report by the British Medical Association (BMA)[1] found that although most asylum seekers are healthy on arrival, their health would subsequently deteriorate as a result of environmental factors.

3. Asylum seekers' barriers to access health services

Under the *Charges to Overseas Visitors Regulations 1989*, asylum seekers and refugees are legally entitled to access primary and secondary healthcare services from the NHS. In practice, however, they face many difficulties in accessing such services. This includes language[2], lack of knowledge about entitlement[3], and lack of information about the health service[4] awareness among NHS practitioners[5].

[1] British Medical Association. *Asylum Seekers: meeting their health needs*, October 2002.
[2] Gammell et al 1993. *Refugees services provision and access to the NHS*.
[3] Taylor. *Health Care for refugees and asylum seekers in Britain*, 1998.
[4] Rutter. *Refugee Children in the Classroom,* 1994.

4. Lack of awareness

The Refugee Council noted in a survey of 81 NHS Trusts carried out in 1997 in Manchester and London that 67% of the respondents (NHS staff) wrongly believed that refugees and asylum seekers were not entitled to free health care[6]. The survey also revealed that the respondents used the terms 'immigrants', 'illegal', and 'refugee' interchangeably. These findings are worrying. The Refugee Council believes that the proposed amendment will exacerbate this lack of awareness and will result in asylum seekers and refugees being questioned about their immigration status inappropriately. Other NHS customer groups including those from the settled BME communities are also likely to be affected.

5. Inappropriate checks by hospital staff

These proposals would require hospital staff to check whether patients have a legal right to be in the UK. Health professionals are trained to deliver healthcare, it would be unfair to expect them to administer immigration checks.

6. Inaccurate media concern

The Refugee Council notes that the Government is concerned about the rising NHS costs and does not condone the illegal use of the NHS. However, refugees and asylum seekers have full legal entitlement to NHS services. The Refugee Council notes that considerable media attention has been devoted to the subject of 'health tourism' and we concur with the observations made in the consultation document that "much media concern is confused and inaccurate". The proposed changes will send out the wrong messages to NHS staff, the public and the media about asylum seekers and refugees and will do nothing to tackle the perceived problem of 'health tourism' and will only compound the current problems that exist around access.

7. Difficult implementation

Experience from other attempts to withhold services[7] from asylum seekers who have reached the end of the asylum process shows that this proposal will be difficult to implement in practice.

8. Lack of definition

The term failed asylum seeker is not defined in law. The asylum determination and appeals process is extremely complex and can involve applications for judicial review. Would, for example, asylum applicants who are pursuing judicial review still be eligible for a service? Would applicants who have exhausted their appeals but are awaiting the outcome of representations to the Secretary of State?

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[5] Karmi. *Refugees: Assessing health needs of from minority groups,* 1998.
[6] *A survey of NHS Trusts in Manchester and London*, September 1997.
[7] Section 4 of the Immigration and Asylum Act 1999 on hard cases.

9. Delayed removal

In practice, many asylum seekers at the end of the asylum process are not quickly removed from the UK for bureaucratic reasons. We are aware of cases where individuals wait for months and even years for their identity to be verified in order for removal to be effected. The Refugee Council believes that the distinction between urgent and non-urgent clinical need is an unhelpful one, as it seems illogical to offer treatment for a life threatening condition, if treatment for the underlying cause is refused on the grounds of non-urgent clinical needs.

10. Client confidentiality

The Refugee Council is concerned about the implications for client confidentiality. The NHS as an organisation has legitimate obligations in processing patients' information. Staff are bound by a duty of confidentiality[8]. There are legal implications that need to be taken into consideration such as the Data Protection Act 1998[9], and the Human Rights Article 8[10].

11. Race relations implications

Under the amended Race Relations Act 1976, public authorities have a duty to promote good relations. The Refugee Council urges that a race impact assessment be carried out prior to this proposal being taken any further.

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[8] *Confidentiality: Code of* Practice, October 2003.
[9] The Data Protection Act 1998 relates to personal data, which is in possession on data controller.
[10] Article 8 of the European Convention on Human Rights as enshrined by the Human Rights Act 1998: The right to respect for private and family life.