

Which visitors from abroad are entitled to free NHS treatment?



Dr Gerard Panting explains rules on eligibility for free primary care for people who are 'ordinarily resident' in the UK and others visiting from Europe and elsewhere

The rules that govern which people visiting the UK are entitled to free primary care on the NHS are not entirely straightforward. These are dealt with in Health Circular HSC 1999/018 from the Department of Health.¹

Who can claim free treatment?

There are a number of grounds on which visitors from other countries may be entitled to free primary care services in the UK. These are:

- ▶ that they are 'ordinarily resident' in the UK (see below)
- ▶ that a visitor (whether or not ordinarily resident in the UK) requires immediately necessary treatment or treatment in an emergency
- ▶ that the visitor is from a European Economic Area (EEA) member country—in addition to emergency treatment, those carrying form E112 are eligible for free medical treatment of their specified condition, and those carrying form E128 are entitled to free NHS treatment for all conditions on the same basis as UK residents
- ▶ that they are nationals from countries with whom the UK has reciprocal agreements — these agreements

seldom have any impact on the provision of primary care services, as anyone in the UK is entitled to receive immediate and necessary treatment

▶ that, in the case of refugees, they have been given leave to remain in the UK or they are awaiting the result of their application to remain here—these people should also be regarded as being 'ordinarily resident'.¹

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Ordinarily resident

The term 'ordinarily resident' has been defined by the courts as meaning those

'lawfully living in the UK voluntarily and for a settled purpose as part of the regular order of his or her life for the time being'.¹

According to the Department of Health, it is unlikely that anyone staying in the UK for less than 6 months will fulfil this criterion.¹

Surprisingly, being ordinarily resident is nothing to do with nationality, or with paying UK taxes or National Insurance contributions.¹ Citizens of the UK who have chosen to retire abroad and come back to the UK for occasional holidays may be surprised to find that they have lost their automatic entitlement to free NHS care, whereas a student from the USA, Venezuela, or the People's Republic of China will qualify as being ordinarily resident if living lawfully in the UK.

Overseas visitors

The term 'overseas visitor' applies to a person who is not ordinarily resident in the UK and is essentially here for just a few months before returning home or, perhaps, deciding to become resident in the UK. If a GP accepts an overseas visitor as an NHS patient, the GP cannot charge for his services. If, on the other hand, the patient is declined NHS treatment but is accepted as a private

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patient, charges can be made for services provided.¹ However, GPs retain the discretion to offer treatment to all people, UK residents and overseas visitors from any country, either as fully registered patients or as temporary residents.

Emergency treatment

When it comes to emergency or immediately required treatment, the GP has an obligation to treat a patient as they are entitled to free treatment. In this context immediate and necessary should be interpreted as covering not only new conditions but also pre-existing conditions that have become worse during the patient's stay. This might necessitate some further form of intervention as well as prescribing medication without which the patient may suffer harm or a deterioration in their condition.¹

Under this category, someone who has retired overseas and has returned to the UK for a holiday could ask for a repeat prescription of insulin, antihypertensive medication, or treatment for any other established condition, on the basis that this qualifies as immediate and necessary treatment. The same applies to overseas visitors who have never been UK residents.

Patients from European Economic Area member states

Patients from European Economic Area (EEA) member states must be

treated free of charge in accordance with European Community regulations. However, this normally only covers treatment for emergencies or for pre-existing conditions that have become exacerbated during the patient's visit to the UK. Exceptions to this rule are those people from EEA countries with either completed Form E112 or Form E128.

Form E112

Visitors from EEA member countries who have been referred specifically for medical treatment and who have a completed Form E112, can expect to receive treatment under the NHS for that particular condition. However, GPs will rarely come across these situations because most of these patients are referred directly to hospital for an organ transplant, a specific operation not available in their own country, or for some other form of specialist care. If these patients have to stay in the UK after their discharge from hospital, they are, strictly speaking, only entitled to primary care services for conditions related to their referral or for emergency or immediately necessary treatment.¹

Form E128

Form E128 applies to two groups of people from EEA member states. These are:

- ▶ workers posted temporarily to the UK, plus any members of their family who accompany them
- ▶ students temporarily resident in the UK to study, plus any family members accompanying them.

Both these groups are entitled to treatment under the NHS for any condition and are, in effect, entitled to full NHS healthcare on the same terms as UK residents. Consequently, patients from EEA member countries, who are carrying Form E128, should not be treated on a private paying basis.¹

Form E128 is quite specific about who is entitled to treatment, and is only valid for the country named on the form and for the stated period. Patients are expected to present the form to the doctor or hospital when seeking

treatment, to prove their eligibility for NHS treatment.¹

Reciprocal agreements

The UK has bilateral health agreements with a number of other countries. In general, these have more impact on hospital services than on primary care, but under the agreement GPs have the discretion either to accept patients on to their NHS list, or to offer them treatment on a fee-paying basis—except, of course, for emergency or immediately necessary treatment, to which all are entitled.

Refugees

Refugees frequently stay in the UK for considerable periods of time before they know whether their applications to remain here permanently have been accepted. Once they have been given leave to stay in the UK, their entitlement is exactly the same as every other person deemed to be ordinarily resident. Refugees who are waiting to find out whether they can stay are also regarded as ordinarily resident.¹ Further information on healthcare policy for asylum seekers and refugees can be obtained from the Department of Health Asylum Seeker Coordination Team.²

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Hospital treatment

The situation is different when it comes to hospital treatment. Overseas visitors

Key points for GPs

- ▶ Visitors who are 'ordinarily resident' in the UK are entitled to full NHS primary care services, irrespective of their nationality
- ▶ Those visitors who are not ordinarily resident are only entitled to full NHS primary care services in an emergency, or if immediate or necessary treatment is required
- ▶ In addition to this emergency treatment, visitors from EEA member states who carry an E112 form are entitled to treatment for their specified condition, and those holding an E128 form are entitled to the same treatment as UK residents
- ▶ Refugees who have been given leave to remain in the UK, or who are awaiting the result of an application to stay, should be regarded as ordinarily resident

EEA=European Economic Area

who have been receiving treatment on the NHS should be warned by the GP that they may be charged for hospital treatment unless they are covered by one of the exemptions listed in the guidance on hospital charges.³ Further information can be found at www.dh.gov.uk/en/Policyandguidance/International/OverseasVisitors/Browsable/DH_074373

Pharmacy costs

The issue for pharmacists is simple and hinges on whether the patient presents an NHS prescription, in which case NHS charges will apply as usual. Normal exemptions from payment, such as for patients aged over 60 years, apply.¹

Summary

In 2004 the Department of Health issued a consultation document on proposals to exclude overseas visitors from free NHS primary medical services.⁴ The

consultation closed in August 2004 and is awaiting a summary of responses on details of outcome. In the meantime the Department of Health has confirmed that HSC 1999/018¹ remains in force.

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Patients who are not ordinarily resident in the UK are not entitled to NHS services from a GP except in an emergency, or if immediate and necessary treatment is required

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In summary, people living in the UK (lawfully) for 6 months or more are regarded as ordinarily resident and,

as such, are entitled to full NHS GP services, no matter what their country of permanent residence or what taxes they pay.

Patients who are not ordinarily resident in the UK are not entitled to NHS services from a GP except in an emergency, or if immediate and necessary treatment is required.

Patients from EEA member states do not have any greater entitlement to treatment than residents of any other country, unless they are carrying either completed Form E112 or E128.

References

1. Department of Health. HSC 1999/018. *Overseas visitors' eligibility to receive free primary care: a clarification of existing policy together with a description of the changes brought in by the new EC health care form E128*. London: DH, 1999. http://www.dh.gov.uk/en/PublicationsAndStatistics/LettersAndCirculars/HealthServiceCirculars/DH_4004148
2. www.dh.gov.uk/en/policyandguidance/international/asylumseekersandrefugees/index.htm
3. General Practitioners Committee. *Overseas visitors—who is eligible for NHS treatment?* London: BMA, 2006.
4. Department of Health. *Proposals to exclude overseas visitors from eligibility to free NHS primary medical services. A consultation*. London: DH, 2004. [G](#)

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