

# **NHS charging regulations (2017)**

**Submission to the Department of Health  
February 2018**

## Introduction

*The Trades Union Congress (TUC) exists to make the working world a better place for everyone. Working people joining together can change things. For more than 150 years, unions have fought for safer workplaces and wages you can build a life on. And today we're needed more than ever to make sure every job is a decent job and everyone at work is treated with respect. We bring together more than 5.6 million working people who make up our 49 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living. Every day, we campaign for more and better jobs, and a more equal, more prosperous country.*

The TUC has a long history of opposition to racism and xenophobia, and has consistently campaigned against discrimination against black and minority ethnic (BME) workers. The TUC believes in a rights-based approach towards migration which ensures equal rights for people at work no matter which country they are from.

The TUC welcomes the opportunity to respond to the Department of Health's formal review of the regulations passed in October 2017 which required non-EEA migrants and overseas visitors to pay charges upfront for all non-urgent NHS care.<sup>1</sup> We have serious concerns about the negative impact they are likely to have on patient care and staff in the health sector.

We also wish it to be noted that we do not believe this review has been conducted in a transparent or fair manner. The review was not publicly advertised but rather stakeholders were notified about the review by email from the Department of Health. We were also disappointed by the narrow focus of the review questions and the short timeframe given for responses which is likely to limit the depth of the information respondents can provide.

**The TUC is opposed not only to the upfront nature of the charges but to the entire charging regime for non-EEA migrants to use the NHS that was introduced by the Immigration Act (2014).** This position was outlined in our evidence to the Department of Health consultations of 2013<sup>2</sup> and 2015<sup>3</sup>.

The TUC believes health care should be free at the point of need. We believe these health charges contravene the UK's obligations as a signatory to the Universal Declaration of Human Rights which include a right to medical care; and the International Covenant on Economic, Social and Cultural Rights which requires states to take the necessary steps to create conditions ensuring access to healthcare for all.

We are concerned that these charges mean that significant numbers of patients from non-EEA countries will be forced to make clinical decisions about their own health that they are not equipped to make and only seek the care of medical professionals when they can afford it, or when they are in a critical condition. By deterring patients from non-EEA countries,

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2017/756/contents/made>

<sup>2</sup> [www.tuc.org.uk/research-analysis/reports/tuc-comments-government-plans-charge-migrants-use-nhs](http://www.tuc.org.uk/research-analysis/reports/tuc-comments-government-plans-charge-migrants-use-nhs)

<sup>3</sup> [www.tuc.org.uk/sites/default/files/TUC%20consultation%20response%20to%20%27Making%20a%20contribution%27%20final.pdf](http://www.tuc.org.uk/sites/default/files/TUC%20consultation%20response%20to%20%27Making%20a%20contribution%27%20final.pdf)

particularly those from vulnerable groups detailed below, from accessing the care they need these charges undermine the foundational ethos of the NHS to be a service based on preventative care and promoting public health.

The TUC believes these health charges are inequitable. The NHS is funded from general taxation to which everyone in the country contributes, including non-EEA migrants, through tax contributions whilst working or simply through paying VAT on everyday consumption. Non-EEA migrants contribute additionally to the NHS as health workers, with recent figures from the Nursing and Midwifery Council showing 10% of NHS nurses are non-EEA citizens.<sup>4</sup>

We are concerned that these upfront charges undermine the work of health professionals by forcing them to undertake document checks ahead of providing care. We believe health professionals should be able to make clinical decisions without charging considerations being taken into account.

Furthermore, the TUC does not believe these charges represent an effective way of raising money for the NHS. Non-payment of health fees by non-EEA migrants is estimated to represent less than one tenth of 1% of the NHS budget.<sup>5</sup> The impact of this cost is small in comparison to the over £22 billion of savings that the Government's austerity cuts have imposed on the NHS.

**The TUC calls on the government to respond to the concerns outlined below by not only dropping regulations that require health fees to be paid upfront but by ending all charges for non-EEA citizens to use the NHS.**

## Key concerns

### **Negative impact on vulnerable groups**

The TUC is concerned that the upfront health charges required by the 2017 regulations will mean that a range of vulnerable groups will not receive the care they need. Although the regulations state in section 5 that those in need of 'immediately necessary' care and those with 'urgent conditions' do not have to pay upfront, we do not think the definition of immediately necessary care is broad enough to encompass the range of services that would require treatment. Meanwhile the fact fees would still have to be paid by non-EEA migrants at a later date is likely to deter them from seeking the care they need.

The following groups are particularly vulnerable:

#### *Pregnant women*

While upfront charges cannot be levied for antenatal care, Maternity Action has evidence that some pregnant women who are undocumented or seeking asylum are now not seeking

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<sup>4</sup> <https://www.nmc.org.uk/globalassets/sitedocuments/other-publications/nmc-register-2013-2017.pdf>

<sup>5</sup> <https://www.channel4.com/news/factcheck/high-immigration-nhs-crisis>

antenatal care as they are afraid of the charges that they will be invoiced for after receiving care.<sup>6</sup> It is widely recognised that antenatal care is essential for detecting conditions such as pre-eclampsia, gestational diabetes, anaemia and urinary tract infections. Without antenatal care, the risk of these conditions continuing untreated is greatly increased, endangering the life and health of the woman and her baby and requiring emergency medical interventions later on in the pregnancy. Women not able to afford antenatal care now have to resort to using the Accident and Emergency services if they develop an emergency health condition which is a much more costly way to provide treatment and puts unnecessary additional pressure on A&E services.

The TUC is also concerned by research by Maternity Action which indicates that some low income women who are uncertain if they will face charges are choosing to give birth at home without medical assistance, endangering the life and health of both mother and child.

#### *Disabled people*

Studies conducted by Doctors of the World<sup>7</sup> found that approximately 1 in 5 service users sampled were affected by health care charging with over a third being deterred from seeking healthcare. This included individuals suffering from a range of acute conditions which qualify as a disability under the Equality Act 2010 such as cancer, diabetes and cataracts. The reasons cited for delaying treatment included fears of incurring debt or fear of the Home Office being informed about their presence in the country. The TUC believes that any delay in seeking treatment presents a serious risk of deterioration in existing or new disabilities which could have a permanent effect on an individual's physical or mental health.<sup>8</sup>

The TUC believes that the evidence from Doctors of the World suggests that charging fees to non-EEA migrants with a disability is out of line with the spirit of the UK's obligations under the United Nations Convention on the Rights of Persons with Disabilities, particularly Article 25 on Health. In section B this Article stipulates 'state parties shall provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons.'

#### *Failed asylum seekers*

Doctors of the World research also suggests that asylum seekers are already less likely to access health care despite being disproportionately likely to have serious conditions that require treatment.<sup>9</sup> Requiring upfront charges means failed asylum seekers will be even less likely to seek care, increasing risks to their health.

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<sup>6</sup> <https://www.maternityaction.org.uk/policy/projects/research-into-charging-for-nhs-maternity-care/>

<sup>7</sup> <https://www.doctorsoftheworld.org.uk/Handlers/Download.ashx?IDMF=2a7fc733-ceef-4417-9783-d69b016ff74f>

<sup>8</sup> Anecdotal evidence from Doctors of the World identified some people with mental health conditions who are entitled to free care do not have easy access to paperwork and passports to prove entitlement. This group must not be denied the free care they are entitled to.

<sup>9</sup> <https://www.doctorsoftheworld.org.uk/Handlers/Download.ashx?IDMF=2a7fc733-ceef-4417-9783-d69b016ff74f>

### *Children*

While there are some exemptions for children's dental and eye care and treatment for communicable diseases, upfront fees are now applied to all other care for children, including prescription costs. We are concerned that this will mean overseas visitors and undocumented migrants on low incomes will be unlikely to take their children to be treated for minor conditions which could have fatal consequences. Parents may delay taking a child that develops a rash or another seemingly minor symptom to the doctor. Some illnesses which are prevalent amongst children, such as meningitis, develop very rapidly and may result in death if a child does not receive treatment quickly. These health charges also seriously jeopardise the health of children with long-term conditions such as cystic fibrosis which necessitate lengthy stays in hospital.

This contravenes the UK's international humanitarian obligations to protect children's healthcare, which include its commitments under the UN Convention on the Rights of the Child. This states in Article 4 (Protection of rights) 'the state must take all available measures to make sure children's rights are respected, protected and fulfilled' and in Article 24 that 'the state must provide every child present on UK territory the same healthcare services as nationals'.

### *Black and Ethnic Minority (BME) groups*

These charges are likely to increase the risk of racial profiling by health staff and compound inequalities already experienced by ethnic minorities who are already marginalised in their ability to access care due to issues of language and lack of accessible information.

### **Negative impact on health staff**

The TUC has serious concerns that the health charges regime introduced by the Immigration Act (2014) are turning health professionals into immigration officials. This undermines health professionals by forcing them to undertake document checks ahead of providing care. We believe health professionals should be able to make clinical decisions without charging considerations being taken into account.

Furthermore, the document checks required by this charging system increase the risk of discrimination in frontline service delivery against individuals with the protected characteristics of gender, race and ethnicity.

Health unions have expressed concerns about their ability to deliver quality care to patients due to the additional document checks required. Unions also report to the TUC that adequate steps have not been taken by the Department of Health to ensure health trusts provide adequate training for staff to administer a charging system in a way that does not discriminate against certain groups and provides immediately necessary and urgent care to those who need it, regardless of their immigration status. The TUC believes it is essential for staff in emergency, primary and community health settings to receive this training.

### **Public health risks**

The TUC believes the upfront health charges required by the 2017 regulations pose a public health risk. Whilst there are exemptions in the regulations for treatment of infectious diseases such as TB and sexually transmitted infections (STIs), we have concerns that it is very difficult to put such an exemption into practice. Often people are not aware they have a communicable disease. Diseases such as HIV are often only spotted in routine GP check-ups or during ante-natal screening. As highlighted above, undocumented migrants on low incomes are unlikely to seek such routine care due to the upfront health charges they now have to pay. They are likely to seek care only once their symptoms become much more advanced by which time there would be a greater risk that life-threatening infections could have spread to the wider population.

**The TUC calls on the government to respond to the concerns outlined in this submission by not only dropping regulations that would require health fees to be paid upfront but by ending all charges for non-EEA citizens to use the NHS.**