

CYLCHLYTHYR IECHYD CYMRU

WHC/2021/026



Llywodraeth Cymru
Welsh Government

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STATWS: CYDYMFFURFIO / GWEITHREDU / GWYBODAETH

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I'w weithredu gan:

Prif Weithredwyr Ymddiriedolaethau'r
GIG a'r Byrddau Iechyd Lleol

Cyfarwyddwyr Gofal Sylfaenol

Partneriaeth Cydwasanaethau GIG
Cymru

Er gwybodaeth:

Cadeiryddion Ymddiriedolaethau'r GIG
a'r Byrddau Iechyd Lleol

Cyfarwyddwyr Cyllid

Cyfarwyddwyr y Gweithlu a Datblygu
Sefydliadol

Cyfarwyddwyr Meddygol

Cyfarwyddwyr Nyrso

Cyfarwyddwyr Therapiau a Gwyddorau
Iechyd

Cyfarwyddwyr Cynllunio

Cyfarwyddwyr Iechyd y Cyhoedd

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WELSH HEALTH CIRCULAR

WHC/2021/026



Llywodraeth Cymru
Welsh Government

Issue Date: 06 October 2021

STATUS: COMPLIANCE / ACTION / INFORMATION

**CATEGORY:
LEGISLATION / DELIVERY / PUBLIC HEALTH / POLICY**

Title: OVERSEAS VISITORS' ELIGIBILITY TO RECEIVE FREE PRIMARY CARE

Date of Expiry / Review: To be initially reviewed 12 months from issue of WHC

For Action by:

Chief Executives of NHS Trusts and
Local Health Boards (LHBs)

Directors of Primary Care

NHS Wales Shared Services
Partnership

For Information:

Chairs of NHS Trusts and Local Health Boards

Directors of Finance

Directors of Workforce & OD

Medical Directors

Directors of Nursing

Directors of Therapies and Health Sciences

Directors of Planning

Directors of Public Health

Overseas Visitors Managers

Action required by: Immediate

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Enclosure(s): One

Summary

1. This circular clarifies the circumstances when overseas visitors are entitled to free primary care. In all other circumstances further advice must be sought from Local Health Board (LHB) Overseas Visitors Managers (OVMs) to determine free primary and secondary care. It replaces WHC(99)32.

Action

2. LHB Chief Executives in conjunction with their Directors of Primary Care are asked to ensure copies of this circular are sent to all General Medical Services (GMS) contractors, Pharmacists, Dentists, Optometrists and Ophthalmic Medical Practitioners as well as local representative committees.

Background

3. This WHC was previously issued in 1999 and there have been a number of significant changes in the intervening period including the UK leaving the EU on 31 December 2020 and the new reciprocal healthcare arrangements with the EU under the Social Security Co-ordination Protocol provisions of the UK Trade and Cooperation Agreement ("TCA"). In addition there have been NHS organisational changes and contractual changes in the primary care contractor professions since 1999. It is therefore considered timely to update and re-issue the Circular to clarify overseas visitors' entitlement to primary care. This is particularly in light of the new circumstances regarding EU/EFTA/Swiss citizens and former UK nationals living abroad seeking healthcare in the UK, which may require the advice and where necessary further investigation by LHB OVMs, to determine a patient's status and whether they are entitled to receive free primary care.

PART I – MEDICAL CARE

4. In relation to primary medical care, this circular applies both to GPs operating under a GMS contract, an alternative provider of medical services (APMS) or GPs working in a LHB managed practice.

5. The National Health Service is primarily for the benefit of people who live in this country. It is therefore considered that eligibility to receive free medical treatment should relate to whether a person is ordinarily resident in the United Kingdom (UK) and not to nationality, the payment of National Insurance contributions or taxes. There are however, a number of NHS services provided by LHBs which are free to everyone regardless of the status of the patient. Please refer to Annex A.

6. The courts have decided that a person is regarded as "ordinarily resident" in the UK if he or she is 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. A person must have an identifiable purpose for his or her residence here and that purpose must have a sufficient degree of continuity to be properly described as settled. If GPs are unclear on the status of an individual they should contact the OVM in their LHB for advice.

7. "Overseas visitor" describes a person who is not ordinarily resident in the UK. It is essentially a short-term position until the person either returns abroad or is given leave to remain in the UK and becomes ordinarily resident here. If a GP chooses to accept such a person as an NHS patient, under their GMS contract or equivalent directions for APMS or LHB medical services (LHBMS) a GP cannot charge those patients (with certain exceptions set out in the relevant legislation for GMS contractors, APMS and LHBMS providers). If the GP decides instead to accept the person as a private patient, the GP is free to charge.

Acceptance of patients

8. GPs' attention is drawn to the following provisions of the National Health Service (General Medical Services Contract (Wales) Regulations 2004 ("the 2004 Regulations").

9. The contractor may, if its list of patients is open, accept an application for inclusion in its list of patients made by or on behalf of any person whether or not resident in its practice area or included, at the time of that application, in the list of patients of another contractor or provider of primary medical services. (Regulation 15)

10. The contractor may, if its list of patients is open, accept a person as a temporary resident if, when that person arrives in that temporary place, he or she intends to stay there for more than 24 hours but not more than three months. (Regulation 16)

11. In the two cases outlined above i.e. full registration or temporary registration, the patient will get free primary medical services treatment (with the exceptions in the relevant legislation where a GP may charge or accept a fee).

12. In addition, GPs may accept patients on a private, paying basis.

Assignment of a patient to a GP by a local health board

13. An overseas visitor may be assigned to a contractor whose list of patients is open (see Regulation 32). The contractor who is assigned the patient is obliged under the 2004 Regulations to treat that patient under the NHS.

14. In certain circumstances, a LHB may also assign a patient to a contractor who has closed its patient list. The procedure for this is outlined in Part 2 of Schedule 6 of the 2004 Regulations.

Treatment and services that patients must receive free of charge:

Emergency or immediately required treatment

15. Under the 2004 Regulations (or equivalent legislation for APMS and LHBMS Providers) a contractor must provide primary medical services required in core hours for the immediately necessary treatment of any person to whom the contractor has been requested to provide treatment owing to an accident or emergency at any place in its practice area (Regulation 15(6)). The 2004 Regulations make no distinction on grounds of nationality or residence. For the purpose of this guidance, we advise that emergency

or immediately required treatment should be interpreted to mean essential treatment which cannot be reasonably delayed until the patient returns to their home country.

16. The 2004 Regulations also require a contractor to provide primary medical services required in core hours for the immediately necessary treatment of the following:

- a person whose application for inclusion in the contractor's list of patients has been refused in accordance with paragraph 17 of Schedule 6 of the 2004 Regulations and who is not registered with another provider of essential services (or their equivalent) in the area of the Local Health Board;
- a person whose application for acceptance as a temporary resident has been rejected under paragraph 17 of Schedule 6 of the 2004 Regulations; or
- a person who is present in the contractor's practice area for less than 24 hours.

17. The contractor shall give the person concerned, free of charge, any immediately necessary treatment for a period of up to 14 days or in the case of persons who are present in the contractor's practice area for less than 24 hours, for 24 hours or such shorter period as the person is present in the contractor's practice area. In summary, we advise that the 2004 Regulations require overseas visitors to be offered emergency or immediately necessary treatment free of charge. However, this is not the case for non-emergency treatment or treatment that is not immediately necessary.

18. It follows that any necessary drugs or dressings which are supplied or prescribed, should be provided free of charge in the same way as for a UK resident. Also the quantities supplied should be no more than are essential for immediate purposes. GPs may be asked to justify unusual prescriptions.

19. It is, of course, a matter for the GP's professional judgement to determine whether treatment is immediately required in each individual case. However, immediately required treatment is considered to include treatment that is required as a result of a pre-existing condition that has become exacerbated during the period of the overseas visitor's stay in this country.

Oxygen therapy and renal dialysis

20. Oxygen therapy is regarded as a benefit that is immediately necessary and visitors to the UK from EU countries eligible under the EU Withdrawal Agreement or the TCA coming on a non-medical visit (eg whilst on holiday or on a business trip) who need oxygen therapy are eligible to obtain supplies through the NHS during their visit on the same terms as UK residents, that is they should not be charged for any oxygen therapy service for which a UK NHS patient is not charged.

21. Similarly renal dialysis is also regarded as a benefit that is immediately necessary. EU nationals requiring routine renal dialysis on a visit to the UK must make advance

arrangements with the NHS renal unit(s) concerned. GPs are not usually involved in arranging such treatment.

22. For patients from all other countries outside of the EU all patients who wish to make private arrangements in advance of their arrival for any treatment, they will be responsible for any costs incurred.

Treatment and services which GPs have discretion to offer the patient either free (ie on the NHS) or on a private, paying basis

23. When an overseas visitor from any country requests non-emergency treatment or treatment that is not immediately necessary, it is for the GP to decide whether to accept that person onto his or her list for NHS treatment. If the GP wishes to accept the overseas visitor onto his or her list, he or she may treat the visitor as either a fully registered patient or as a temporary resident. Either way, if the GP accepts the patient onto his or her list, the normal contractual terms will apply and therefore the GP has to provide that treatment free of charge to the patient (except for special cases where the 2004 Regulations or equivalent legislation for APMS and LHBMS providers allow the GP to charge or accept a fee).

24. If the GP does not wish to accept the overseas visitor onto his or her list, the GP may treat the patient on a private, paying basis (with the exceptions in paragraph 26 below). GPs are encouraged to do so on the grounds that eligibility to receive free medical treatment is intended to relate to whether a person is ordinarily resident in the UK.

25. Many overseas visitors will expect and wish to obtain private treatment. GPs and their staff are however advised to do all they can to ensure that patients fully understand whether they are being treated as private or as NHS patients. Misunderstandings on this point are a common cause of subsequent disputes. It would be particularly appropriate to offer private treatment if it appears that the patient has come to the UK specifically to obtain treatment.

26. Patients from EU member countries who have come to the UK specifically for treatment should have the approval of their sickness insurance institution to obtain that treatment here, and should be able to produce form S1 or S2. Both form holders would be able to access free primary treatment on the basis set out below:

- If an S1 holder is UK-insured but residing in a Member State and visiting Wales, then the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Welsh Charging Regulations”) would apply, that is, primary care is free and they would be able to access primary care as a temporary visitor without paying anything, subject to finding a GP who is willing to accept them onto their list.
- If an S1 holder is EU Member State insured and has moved their residency to Wales, they would be able to access primary care in Wales without incurring any

costs once they have been accepted onto a GP's list. The UK can claim the costs back from the competent Member State, provided that these costs have been reported to NHSBSA, GPs should contact their LHB OVM to submit these details to the NHSBSA. However, a Member State insured S1 holder who resides elsewhere in the UK other than Wales would not be entitled to access primary care free of charge in Wales to the extent that primary care charges apply in Wales for non-ordinary residents.

- If an S2 holder is an EU Member State insured person who has travelled to Wales to receive planned treatment with an S2, their S2 allows the person to access the treatment that is specified on the S2 certificate (this is usually elective secondary care). If this includes primary care then any primary care consultations would be covered by the S2 and reclaimed from the Member State through NHSBSA. If primary care is not included in the S2 they would be able to access primary care using their Member State-issued EHIC, as necessary care.

Overseas visitors staying for over six months in the UK

27. An Immigration Health Surcharge is payable by persons subject to immigration control who apply for a visa to enter the UK for more than six months or who apply to remain in a temporary capacity. People with indefinite leave to remain in the UK as well as those not subject to immigration control (e.g. diplomats posted to the UK) are not liable to pay the Immigration Health Surcharge, but may be ordinarily resident and entitled to receive relevant services free of charge on that basis.

28. Payment of the Immigration Health Surcharge entitles the payer to relevant services on a similar basis as someone who is ordinarily resident. Payment of the Immigration Health Surcharge is mandatory when making an immigration application, subject to exemptions for certain categories of people and the discretion of the Home Secretary to reduce, waive or refund all or part of the Immigration Health Surcharge payment. The LHB OVM can provide further information on this if required.

Refugees/Asylum Seekers/Failed Asylum Seekers

29. A refugee/asylum seeker who has made an application to the Home Office for refugee status residing in Wales should be regarded as ordinarily resident for the purposes of primary and secondary NHS care. This includes refugees/asylum seekers who are in Wales and have been granted leave to remain, those awaiting the result of their application to remain in the UK and refugees/asylum seekers whose applications for leave to remain UK have been refused – these individuals should also be regarded as ordinarily resident and exempt from charging until the point they leave the UK.

Persons leaving the UK for more than 3 months

30. The LHB shall remove a patient from the contractor's list of patients where it receives notification that that patient intends to be away from the United Kingdom for a period of at least three months or more.

Referrals to hospital

31. GPs who refer overseas visitors to hospital should warn them that they are liable to be charged unless they or the treatment is covered by the Withdrawal Agreement, the new reciprocal healthcare arrangements with the EU under the TCA, or other exemptions that apply under the Welsh Charging Regulations. This applies irrespective of whether the patient has been given treatment under the NHS or on a private basis by the GP. The GP's practice can seek further information on the patients charging status from the LHB OVM or can choose to direct the patient to the LHB OVM for further information and advice.

PART II - PHARMACEUTICAL SERVICES

32. A pharmacist or doctor providing pharmaceutical services may dispense any NHS prescription presented regardless of whether the patient is ordinarily resident or not. In Wales prescriptions are exempt from NHS charges. However NHS charges may be payable where an English prescription form is presented at a pharmacy in Wales. In these situations unless the patient has a qualifying exemption, NHS charges will be payable in the normal way. A pharmacist may refuse to dispense an NHS prescription if a patient who is required to pay a charge does not do so. If a patient's chargeable status is not clear, the charge should be paid and the patient given an NHS receipt (Form WP57). Their entitlement to exemption or remission may then be established retrospectively.

PART III - DENTAL TREATMENT

33. As with GPs, General Dental Practitioners (GDPs) have discretion over whether or not to accept a patient for NHS treatment. GDPs will find the guidance at paragraphs 6 and 7 of this Circular helpful in judging whether a person who applies to them for NHS dental treatment is ordinarily resident. A GDPs discretion is limited to accepting patients on either a NHS or private fee paying basis. Where a patient is accepted for NHS treatment, the charges payable, exemptions and remissions available under the General Dental Services/Personal Dental Services regulations¹ apply to the patient. If a patient's chargeable status is not clear, the charge should be paid and the patient given a NHS receipt. They can then submit a claim to see if they are eligible for a refund by completing form HC5W(D). The patient's entitlement to exemption or remission may then be established retrospectively.

34. EEA nationals (other than holders of an EU-issued EHIC or student EHIC) and nationals from other countries who seek dental treatment should be treated as overseas visitors. Holders of EHICs and refugees/asylum seekers are entitled to NHS hospital dental treatment, although GDPs still have discretion over whether or not to admit them to their list.

35. People resident in EU countries, and not resident in the UK, may visit this country for the purpose of receiving specific dental health treatment under the NHS, but will

¹ The National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 and the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006.

need to bring with them form S2 (formerly form E112) which they should obtain from their own relevant EU Member State office dealing with health services. The S2 entitles them to receive NHS treatment as specified in the S2 form in this country in the same way as a UK resident.

PART IV - OPTICAL SERVICES

36. Ophthalmic opticians (optometrists) have discretion over whether or not, subject to the eligibility criteria detailed in the General Ophthalmic Services (GOS) Regulations², to accept a patient for an NHS sight test and, subject to the eligibility criteria detailed in the Wales Eye Care Service manuals pursuant to the Wales Eye Care Service Legislative Directions, to accept a patient for an NHS eye health examination. Opticians will find the guidance at paragraphs 6 and 7 of this Circular helpful in judging whether a person who applies to them for an NHS sight test or eye health examination is ordinarily resident. Where a patient is accepted for NHS treatment, he/she may receive a free sight test or eye health examination and, where necessary, be issued with an optical voucher if eligible under the NHS Optical Charges and Payments Regulations. If a patient's chargeable status is not clear, private charges should be paid and the patient can claim a refund by completing form HC5W(O). Their eligibility for NHS sight tests and help towards the cost of glasses may be established retrospectively and a refund claimed.

² The National Health Service (General Ophthalmic Services) Regulations 1986;

ANNEX A

Some NHS services provided by LHBs are free to everyone regardless of the status of the patient. The current list of services includes:

- A. treatment given in an accident and emergency department or casualty department. This exemption from charges ceases once the patient is admitted to a ward or given an out-patient appointment. For example, where emergency treatment is given elsewhere in the hospital e.g. intensive care or coronary care, it is chargeable – it is the location that is exempt, not the type of treatment;
- B. treatment given elsewhere than at a hospital, or treatment given by someone who is not either employed by or under the direction of the LHB. This means that some services provided in the community will be chargeable only where the staff are employed by a LHB (for example District Nurses employed by the LHB) but not where they are employed by a general practitioner (for example practice nurses);
- C. family planning services;
- D. certain diseases where treatment is necessary to protect the wider public health. This exemption from charge will apply to the diagnosis even if the outcome is a negative result. It does not apply to any secondary illness that may be present even if treatment is necessary in order to successfully treat the exempted disease.

The exempt diseases are:

- Acute encephalitis
- Acute poliomyelitis
- Amoebic dysentery
- Anthrax
- Bacillary dysentery
- Coronavirus (COVID-19)
- Cholera
- Diphtheria
- Food poisoning
- Leprosy
- Leptospirosis
- Malaria
- Measles
- Meningitis
- Meningococcal septicaemia (without meningitis)
- Mumps
- Ophthalmia neonatorum
- Pandemic Influenza

Paratyphoid fever
Plague
Rabies
Relapsing fever
Rubella
Salmonella infection
Severe Acute Respiratory Syndrome (SARS)
Scarlet fever
Smallpox
Staphylococcal infections likely to cause food poisoning
Tetanus
Tuberculosis
Typhoid fever
Typhus
Viral haemorrhagic fevers
Viral hepatitis
Whooping cough
Yellow fever

- E. treatment given in, or as the result of a referral from, a sexually transmitted diseases clinic;
- F. treatment given to people detained under the provisions of the Mental Health Act 1983;
- G. treatment given for mental health problems as part of a court probation order.