

# National Health Service (NHS) maternity care for pregnant women from other countries

## Introduction

- ❖ Maternity care is very important for the health and safety of the mother and baby.
- ❖ Not everyone is entitled to free National Health Service (NHS) maternity care in the United Kingdom (UK).
- ❖ Some people classed as 'overseas visitors' are liable to pay for their maternity care.
- ❖ This document explains the rules about maternity care for women from other countries, and what happens if you are liable to pay but cannot afford to pay.

## Sources of information

This document is based on the National Health Service (Charges to Overseas Visitors) Regulations 1989, as amended by further regulations in 1991, 1994, 2000, 2002 and 2004. It refers to the Department of Health's *Implementing the Overseas Visitors Hospital Charging Regulations: Guidance for NHS Trust Hospitals in England (2004)* ("Guidance"). You can read the Guidance by clicking this link:

<http://www.dh.gov.uk/assetRoot/04/10/60/24/04106024.pdf>

This document explains the situation in England. Similar charges apply in Wales, Scotland and Northern Ireland. You can read the guidance for Wales by clicking the following link: [www.wales.gov.uk/overseasnhsguidance](http://www.wales.gov.uk/overseasnhsguidance). The guidance for Scotland is currently being revised (summer 2006). You can read the regulations for Northern Ireland by clicking the following link: <http://www.opsi.gov.uk/Sr/sr2005/20050551.htm>

## Outline of rules

- ❖ If you are 'ordinarily resident' in the UK you are entitled to free NHS maternity care.
- ❖ If you are classed as an 'overseas visitor' you may be liable to pay for NHS maternity care.
- ❖ If you are an 'overseas visitor' and you have been living lawfully in the UK for at least 12 months before your maternity care started, you are entitled to free NHS maternity care (see question 1 below).
- ❖ If you are an 'overseas visitor' and you have not been living in the UK for at least 12 months before your maternity care started, you are liable to pay for NHS maternity care UNLESS you fall within one of the exemption categories (see question 2 below).
- ❖ If you are liable to pay for maternity care, the hospital cannot require you to pay any money in advance, because maternity care is classed as 'immediately necessary treatment'.

## Who is an 'overseas visitor'?

An 'overseas visitor' is anyone who is *not* 'ordinarily resident' in the UK. Although there is no precise definition of what it means to be 'ordinarily resident', the Guidance states that a hospital, in assessing the residence of person of a person seeking free NHS care, needs to consider whether they are:

*"living lawfully in the United Kingdom voluntarily and for settled purposes as part of the regular order of their life for the time being, whether they have an identifiable purpose for their residence here and whether that purpose has a sufficient degree of continuity to be properly described as 'settled'"* (Guidance paragraph 5.5).

The Guidance further states: "There is no minimum period of residence that confers ordinary resident status. In the past the Department of Health has suggested that someone who has been here for less than 6 months is less likely to meet the 'settled' criterion but it is important to realise that this is only a guideline, not a deadline" (Guidance paragraph 5.6).

If you are classed as 'ordinarily resident' you are automatically entitled to free NHS maternity care and the rest of this document does not apply to you.

If you are not 'ordinarily resident' you are classed as an 'overseas visitor' and the rest of this document does apply to you.

### Rules applying to overseas visitors

#### 1. I have been in the UK for more than 12 months - can I get free NHS hospital maternity care?

NHS maternity care is free if you have been living lawfully in the UK for at least 12 months before the maternity care begins. (Guidance paragraph 6.19)

You are liable to pay for maternity care if:

- you do not have a current valid visa to be in the UK (e.g. you entered the UK illegally or you have overstayed your visa) (Guidance paragraph 6.21), OR
- you have claimed asylum in the UK but your claim, and any appeals, have been rejected (Guidance paragraph 6.23).

However, if you had already begun your maternity care at the time your asylum claim was rejected, or your immigration status changed from lawful to unlawful (e.g. you overstayed your visa), your care for the current pregnancy remains free (Guidance paragraphs 6.21, 6.23).

#### 2. I have been in the UK for less than 12 months - can I get free NHS hospital maternity care?

If you have been living in the UK for less than 12 months before the maternity care begins, NHS maternity care is only free if you fit into one (or more) of the exemption categories listed below (Guidance paragraph 6.11- 6.23).

If you are married, and you live permanently with your husband\* in the UK or you are with him in the UK for the duration of your visit, and he is in one of these exemption categories, then you are also entitled to free care.

##### Exemption categories

- You (or your husband) are an **asylum seeker** and your claim (including any appeals) has not yet been determined, or
- You (or your husband) have been granted **refugee status** in the UK, or
- You (or your husband) are **taking up permanent residence** in the UK, which you are entitled to do if you (or your husband) have been granted **leave to remain**, or

- You (or your husband) are **employed** by an employer who has his principal place of business in the UK or is registered in the UK as a branch of an overseas company, or
- You (or your husband) are **self-employed** and your principal place of business is in the UK, or
- You (or your husband) are working as a **volunteer** providing services similar to health or social services, or
- You (or your husband) are pursuing a **full time course of study** which lasts at least six months, or if less than six months it is substantially funded by the UK government, or
- You (or your husband) have been **working abroad for not more than five years**, provided you have lawfully lived in the UK for at least ten continuous years at some point.
- You are detained under the Immigration Act 1971.

\* 'Husband' includes a registered civil partner (in a lesbian relationship), but does not include an unmarried partner in a heterosexual relationship (Source: Schedule 3 of The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114) )

There are some other minor categories of people who are exempt- see Guidance 6.24 - 6.35 - which are not relevant to most women from other countries.

If you have been living lawfully in the UK for less than 12 months, and you are not in an exemption category, you are liable to pay for maternity care. You are also liable to pay for maternity care if:

- you do not have a current valid visa to be in the UK (e.g. you entered the UK illegally or you have overstayed your visa) (Guidance paragraph 6.21), OR
- you have claimed asylum in the UK but your claim, and any appeals, have been rejected (Guidance paragraph 6.23).

However, if you had already begun free maternity care at the time your asylum claim was rejected, or your immigration status changed from lawful to unlawful (e.g. you overstayed your visa), your care for the current pregnancy remains free (Guidance paragraphs 6.21, 6.23)

### **3. What happens if my immigration documents state I can have no recourse to public funds?**

The "no recourse to public funds" restriction applies to social security benefits and housing. It does not affect whether or not you are liable to pay for NHS maternity care (Guidance p42).

### **4. What are the rules for maternity services when I am pregnant or after I have had my baby?**

"Maternity services are not exempt from charges. However because of the severe health risks associated with conditions such as eclampsia and pre-eclampsia, maternity services should not be withheld if the woman is unable to pay in advance" (Guidance page 42).

Because it is so important to have medical care when you are pregnant, giving birth and after you have had your baby, maternity care is always treated as "immediately necessary treatment". This means that if you are liable to pay for care, the hospital cannot require you to pay for maternity care in advance. They cannot refuse to give you maternity care even if you know that you cannot afford to pay for it. If the hospital refused to give you

maternity care, that could be a breach of the Human Rights Act 1998 (Guidance paragraph 3.1).

### **5. What happens if I can't afford to pay?**

You are still entitled to receive maternity care. If you are liable to pay for maternity care you will receive a bill from the hospital, even if you have told them you cannot pay. They may use a debt collection agency to ask you to pay the bill. However, if you can show that you have no money and cannot afford to pay the bill, the hospital can write off the debt in the end (Guidance paragraph 8.16).

### **6. What counts as maternity care?**

Maternity care is not fully defined, but the Department of Health has confirmed that it includes antenatal care, care during birth, hospital-based postnatal care for mother and baby, and community-based postnatal care provided by midwives employed by the hospital trust.

Maternity care may not include other important services which you might need during pregnancy, for example mental health services or physiotherapy. If you are liable to pay for hospital care, you might be asked to pay for these services in advance.

Maternity care does not include termination of pregnancy, unless your life is at risk (Guidance page 45).

### **7. Do I have to pay for HIV treatment?**

If you are pregnant and HIV positive it is essential that you receive treatment for HIV as this can reduce the chances of passing the virus to your unborn baby from around 30% (without treatment) to just 1-2% (with treatment). HIV treatment during pregnancy is therefore classed as part of your maternity care (so long as your doctor confirms that treatment is necessary). This means that if you are liable to pay for hospital care, the hospital cannot require you to pay for your HIV care in advance. As for the rest of your maternity care, if you can show you are unable to pay the hospital may write off the debt. (Source: Maternity Guidance issued to Overseas Visitors Managers by the Department of Health, 2005).

### **8. Do I have to pay for child health services for my baby?**

The rules about paying for care only apply (at present) to care provided by staff employed by a hospital trust. Although your baby is not exempt from hospital charges if you are liable to pay for hospital care, the care provided by primary care staff - including GPs and health visitors - remains free. This means that you should be able to make full use of community child health services, including immunisations and developmental check-ups. However, if you do not have a current valid visa to be in the UK (e.g. you entered the UK illegally or you have overstayed your visa, or you asylum claim and any appeals have failed), a GP can choose whether or not to register you and your child as patients.

### **9. What questions will I be asked at the hospital?**

When you book for maternity care you will be asked two 'baseline questions':

"Where have you lived for the last 12 months?"

"Can you show you have the right to live here?"

You may be asked to provide evidence to support your answers. For example, evidence that you have lived in the UK for 12 months could be a housing contract, utility bill, or bank statement. Evidence that you have the right to live in the UK could be a birth certificate, passport, entry clearance documents or ancestral visa.

If you have not lived in the UK for the last 12 months, or cannot show you have the right to live in the UK, you will be referred to the hospital's Overseas Visitors Team for an interview. You may be asked to provide evidence about your immigration status. The Overseas Visitors Team should be aware of all the possible exemptions from paying for care. They should also be aware that even if you are liable to pay for your care, they have no right to require you to pay any money *before* you receive maternity care.

**10. I have recently spent a long time back in my country of origin, but I want to have my baby in the UK. Does going abroad affect whether I am liable to pay for maternity care?**

When assessing whether you have been living in the UK for the last 12 months, the hospital will ignore up to three months spent abroad during that time (either one trip lasting up to three months, or several trips that total no more than three months) (Guidance, paragraph 6.2). If you have been living abroad for more than three months in the last 12 months, you will be treated as having been in the UK for less than 12 months. This means that you will be liable to pay for care unless you (or your husband) fit into one of the exemption categories set out in question 2 - for example, that you are returning to the UK to take up permanent residence.

**11. Will I be reported to the immigration authorities if I cannot prove to the hospital I am in the UK lawfully?**

There is a risk that this could happen. The Guidance states: "Where a hospital becomes aware that a patient may be here without proper authorisation then a decision needs to be taken in the full light of a patient's circumstances as to whether his suspected immigration status should be reported...Where there is a public interest argument for reporting the patient's immigration status this needs to be weighed against not just medical confidentiality but also the medical needs of the patient and the wider public" (Guidance page 40). The Guidance is, however, clear that people should not be reported routinely, and suggests that the hospital should probably take legal advice before it reported someone.

**12. Does my country have a special agreement with the UK?**

Some countries have an agreement with the UK that maternity care for their national will be free in some circumstances.

If you are from a **European Economic Area (EEA) country, or Switzerland**, you are covered for all maternity care - by which they mean antenatal and postnatal care for up to 15 weeks after the birth of the child (Guidance paragraph 7.5 and page 42).

This applies to the following countries: Austria, Belgium, Southern Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland.

If you are from a **non-EEA country that has a bilateral healthcare agreement** with the UK, you are eligible for free immediately necessary treatment in connection with their pregnancy, if an unexpected emergency arises during your visit to the UK (Guidance paragraph 7.19 and page 42). This applies irrespective of whether you knew you were

pregnant when you came to the UK. You are, however, liable to pay for maternity care if you come to the UK or remain in the UK *in order to obtain* routine antenatal care or to give birth.

This includes the following countries: Anguilla, Armenia, Australia, Azerbaijan, Barbados, Belarus, Bosnia, British Virgin Islands, Bulgaria, Channel Islands, Croatia, Falkland Islands, Georgia, Gibraltar, Isle of Man, Serbia & Montenegro, Kazakhstan, Kirgizstan, Macedonia, Moldova, Montserrat, New Zealand, Romania, Russia, St Helena, Takiistan, Turkmenistan, Turks & Caicos Islands, Ukraine, Uzbekistan.

### **13. What do I do if the hospital refuses to treat me unless I pay, or won't allow me to see a midwife until the charges are sorted out?**

The hospital should provide you with maternity care whether or not you are able to pay, and should not delay care while charges are sorted out. If the hospital does not provide you with an appointment with a midwife, you can contact the Supervisor of Midwives for that hospital, explain your situation and ask them to intervene. The role of the Supervisor of Midwives is to protect the public, and they should organise for you to get the maternity care you need.

Every hospital providing maternity care has a Supervisor of Midwives available at any time. You can contact them by phoning the hospital switchboard and asking to speak to the Supervisor of Midwives.

If the Supervisor of Midwives is unhelpful, you can contact the Local Supervising Authority for your area. A list of the Local Supervising Authorities is at <http://www.nmc-uk.org/aArticle.aspx?ArticleID=2096>

### **14. Further help**

If you are refused maternity care or wrongly asked to pay money in advance you can contact the Department of Health Overseas Visitors Policy Team on 0113 2545819.

If you need legal advice in a dispute with the hospital you can contact solicitors firm Pierce Glynn: 0207 407 0007.

**14. Checklist\***

\* This does not include people from EEA countries or people from countries that have bilateral healthcare agreements - see question 12 above.

	Entitled to free maternity care	Liable to pay for maternity care
I am 'ordinarily resident' in the UK	✓	
I am not 'ordinarily resident', but...		
...I have lived in the UK lawfully for more than 12 months	✓	
...I have lived in the UK lawfully for less than 12 months, but I am taking up permanent residence, or I am employed, self-employed, studying for more than six months, or volunteering in specific activities in the UK	✓	
...I am an asylum seeker or refugee	✓	
...my asylum claim and any appeals have been refused		✓
...I do not have a valid visa to be in the UK		✓
...I am on a short term visit to relatives in the UK		✓

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