

## Policy for Overseas Visitors

***Please be aware that this printed version of the Policy may NOT be the latest version. Staff are reminded that they should always refer to the Intranet for the latest version.***

<b>Purpose of Agreement</b>	<p>To set out the rules and regulations governing the identification, treatment and charging of overseas visitors and provide advice and guidance on implementation.</p> <p>Adherence to this policy should that the Trust meets its legal and ethical obligations in regard to overseas visitors.</p> <p>To inform staff of their operational and legal responsibilities.</p>
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# POLICY FOR OVERSEAS PATIENTS

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## 1. INTRODUCTION & PURPOSE

- 1.1. The purpose of this policy is to ensure that overseas visitors are identified, the appropriate level of care is provided and that they are charged appropriately for their care in line with the Charging Regulations 2011. It sets out the rules and regulations governing the identification, treatment and charging of overseas visitors and informs staff of their operational and legal responsibilities.
- 1.2. This policy applies to all Solent NHS Trust Clinical Services with the exception of Primary Care Services such as GP practices and mandatory dental services.
- 1.3. Adherence to this policy should ensure that the Trust meets its legal and ethical obligations in regard to overseas visitors.

## 2. SCOPE & DEFINITIONS

### *Scope*

- 2.1 This document applies to all directly and indirectly employed staff within Solent NHS Trust and other persons working within the organisation in line with Solent NHS Trust's Equal Opportunities Document.
- 2.2 Solent NHS Trust is committed to the principles of Equality and Diversity and will strive to eliminate unlawful discrimination in all its forms. We will strive towards demonstrating fairness and Equal Opportunities for users of services, carers, the wider community and our staff.

### *Definitions*

**Charging Regulations** – National Health Services (Charges to Overseas Visitors) Regulations 2011

**Hospital Services** - services provided at an NHS hospital, or services delivered in the community when the staff providing the services are employed/directed by an NHS hospital. Excludes Primary Care Services.

**NHS Charged Patients** – overseas visitors who are liable to pay NHS charges for treatment as set out in the Charging Regulations. Not private patients.

**Overseas Visitors** – any person of any nationality who is not ordinarily resident in the UK.

**Ordinarily Resident** - "Living lawfully in the UK 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.'"

**Primary Care Services** – Solent GP practices and Mandatory Services provided by Solent Dental Service.

### 3. LEGAL FRAMEWORK

- 3.1 The National Health Service provides healthcare for people who live in the United Kingdom. People who do not normally live in this country are not automatically entitled to use the NHS free of charge – regardless of their nationality or whether they hold a British passport or have lived and paid National Insurance contributions and taxes in this country in the past.
- 3.2 The statutory provisions which enable overseas visitors to be charged for NHS treatment are found in section 175 of the National Health Service Act 2006 (“the 2006 Act”). Section 175 allows the Secretary of State for Health to make regulations for making and recovery of charges in relation to any person who is not ordinarily resident in Great Britain for any NHS services provided to them. They also give him powers to calculate such charges on any appropriate commercial basis. These powers are devolved to the relevant NHS bodies in England.
- 3.3 The section 175 regulatory powers have so far only been used in relation to NHS Hospital Services. The Charging Regulations made under those powers place a legal obligation on the trust providing treatment to:
- identify those patients who are not ordinarily resident in the United Kingdom;
  - establish if they are exempt from charges by virtue of the Charging Regulations; and,
  - if they are not exempt, make and recover a charge from them to cover the full cost of their treatment.
- 3.4 Hospital Services includes services provided at a hospital, or services delivered in the community when the staff providing the services employed/directed by an NHS hospital. All Solent Services fall into the category of Hospital Services with the exception of the Primary Care Services: GP practices and mandatory dental services.
- 3.5 The Charging Regulations 2011 do not apply to Primary Care Services. Furthermore, registration at a GP practice does not entitle a patient to free NHS hospital treatment.
- 3.6 A summary of the Charging Regulations 2011 is set out below and further detail can be found in Chapter 3 of Appendix 1.

#### INTRODUCTION

**Regulation 1** cites the title of the Charging Regulations, and states that they come into force on 1st August 2011 and apply in relation to England only.

**Regulation 2** provides definitions of the words and terms used in the Charging Regulations and also what temporary absence is allowed when calculating a period of residence in the UK.

The definitions identified as the most useful on a daily basis are calculating the period of residence, Child, Relevant Services, Overseas Visitor and Treatment the need for which arose during the visit.

#### **PROVISION FOR MAKING AND RECOVERING CHARGES**

**Regulation 3** imposes an obligation on a Solent NHS Trust to make and recover charges in respect of relevant services provided to an overseas visitor where the relevant NHS body determines that no exemption provided for in these Regulations applies.

**Regulation 4** provides that the overseas visitor will be liable for the payment of such charges except where the overseas visitor:

- a. Works on a ship or vessel in which case it is the owner of the ship who is liable to pay,
- b. Works on an aircraft in which case it is the employer who is liable to pay,
- c. or where the overseas visitor is a child to whom no exemption applies in which case it is the parent or legal guardian who is liable to pay.

**Regulation 5** provides for repayments to be made to the overseas visitor or other person liable to pay a charge under these Regulations where a charge has been made and recovered which is not payable under these Regulations.

#### **SERVICE EXEMPTIONS**

**Regulation 6** sets out services provided to overseas visitors which are exempt from charges, including:

- a. accident and emergency services;
- b. family planning services;
- c. certain diseases where treatment is necessary to protect the wider public health.
- d. treatment for sexually transmitted diseases. For HIV/AIDS this exemption only applies to the initial diagnostic test and any associated counseling;
- e. treatment given to people detained, or liable to be detained, or subject to a community treatment order under the provisions of the Mental Health Act 1983 or other legislation authorising detention in a hospital because of mental disorder;
- f. treatment (other than that described in (e), above) which is imposed by, or included in, an order of the Court;
- g. services provided other than in a hospital or by a person who is employed to work for, or on behalf of, a hospital (as defined in 1.2 above). This means that services provided in the community will be chargeable only where the staff providing them are employed by or on behalf of an NHS hospital.

#### **VISITOR EXEMPTIONS**

**Regulations 7 to 22** set out the circumstances in which an overseas visitor is exempt from charges for any relevant services.

**Regulation 7** provides an exemption for an overseas visitor who has lawfully resided in the United Kingdom for at least twelve months.

**Regulation 8** exempts an overseas visitor who is present in the United Kingdom (or designated areas) for a specified purpose, such as employment, voluntary work, study, taking up permanent residence.

**Regulation 9** provides exemption for an overseas visitor who is entitled to the services in question by virtue of European Union Rights arising under EU Regulations.

**Regulation 10** provides an exemption for services provided to an overseas visitor where those services are covered by the terms of a reciprocal agreement made between the United Kingdom and specific countries identified in Schedule 2.

**Regulations 11 to 15** provide exemptions in certain circumstances for refugees, asylum seekers and children in care, for cases involving human trafficking, for exceptional humanitarian reasons, for diplomats and NATO forces.

**Regulations 16 and 17** provide exemptions from charges for United Kingdom pensioners who reside in another EEA State or Switzerland for a period not exceeding six months each year, and for those receiving any pension or other benefits paid under certain war or armed forces compensation schemes.

**Regulation 18** provides an exemption for members of the United Kingdom forces, other Crown servants, and others employed by certain public bodies.

**Regulations 19 to 22** provide exemptions in certain circumstances for former United Kingdom residents working overseas, missionaries, persons imprisoned or detained under specified enactments and employees on ships.

**Regulation 23** sets out the circumstances in which an overseas visitor will be exempt from Charges for relevant services the need for which arose during the overseas visitor's visit to the United Kingdom. In particular regulation 23(1)(e) provides for an exemption for individuals who are part of the Games Family during the Olympic and Paralympic Games in London 2012 between 9th July 2012 and 12th September 2012.

**Regulation 24** sets out the basis on which a family member of an overseas visitor may also be exempt from charges for relevant services.

**Regulation 25** and Schedules 4 and 5 make consequential revocations and amendments to other legislation, as a result of the consolidation effected by these Regulations.

***Figure 1 Summary of Charging Regulations, 2011***

**4. LIABILITY FOR NHS CHARGES**

- 4.1 The Charging Regulations set out who is entitled to NHS Hospital care free of charge. This does not include GP or mandatory dental services.
- 4.2 Entitlement to free NHS Hospital Treatment is based on whether a person is Ordinarily Resident. This is defined as "Living lawfully in the UK 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.’”

- 4.3 Further detail can be found in paragraphs 3.4 to 3.15 of Appendix 1
- 4.4 A person who is not ordinarily resident is an “Overseas Visitor” and this person may incur a charge for NHS Hospital care unless another of the exemptions listed in the Charging Regulations applies:
- 4.5 The Charging Regulations set out additional exemptions for Overseas Visitors:
  - a. Certain types of services including treatment for example treatment in A&E/WIC departments, sexual health services (excluding terminations), some communicable diseases. The full list of exemptions can be found in Regulation 6, paragraphs 3.26 to 3.27 Appendix 1.
  - b. certain types of visitors for example visitors from the EU or from countries with whom the UK has reciprocal agreements, students, refugees and asylum seekers, Olympic Games participants, family members. The extent of free NHS care will be dependent on the relevant regulation and the ability of the visitor to provide the appropriate evidence. For example a visitor from the EU with a valid European Health Insurance Card will be able to access “all medically necessary treatment.” Without the card a patient should be charged (unless another exemption applies) but may be able to claim reimbursement at a later date. A visitor from a country with a reciprocal agreement will be able to access “treatment for which the need arises during the stay.” The full list of exemptions and examples of appropriate evidence can be found in Regulations 7-24, paragraphs 3.28 to 3.109 of Appendix 1.

## **5. IDENTIFICATION OF PATIENTS LIABLE FOR NHS CHARGES**

- 5.1 Solent NHS Trust staff will identify without discrimination NHS Charged patients by following the process outlined below in line with DH guidance. Further detail can be found in Chapter 5 of Appendix 1.
- 5.2 Registration at an NHS GP practice does not entitle a patient to free NHS Hospital treatment. The Trust is required to identify potential overseas visitors and apply the guidance. There is no requirement for GPs to identify potential overseas visitors in any referral to other NHS services.

### ***Stage 1 baseline questions***

- 5.3 All patients accessing services provided by Solent NHS Trust will be asked the same baseline questions in order to establish whether they are ordinarily resident. By asking all patients any claim to discrimination is avoided.

- 5.2 The questions will be asked at the earliest opportunity which will usually be at the time the first appointment is scheduled, responses recorded and evidence checked.
- 5.3 The questions have been identified by DH and are:  
*Question 1: Are you a UK/EEA national or do you have a valid visa or leave to enter/ remain in the UK?*
- Question 2: which countries have you lived in for the past 12 months?*
- 5.4 Patients who are unable to demonstrate the right to live in the UK, or have lived for more than 3 months in another country, or for which there is any other concern will be referred to the OVM for stage 2 interviews. The patient will be informed of the need for interview to establish eligibility for free NHS care.
- 5.5 All EU/EEA visitors will be required to show their European Health Insurance Card (EHIC), or Provisional Replacement Card (PRC) for **all treatment** including treatment that may be exempt under service exemptions in Regulation 6 e.g. treatment in A&E/WIC. This will be recorded and reported to the OVM.

### ***Stage 2 interviews***

- 5.6 Patients who may be liable for charges will be interviewed by an OVM who has a thorough understanding of the Regulations. This interview will be carried out as soon as possible.
- 5.7 In all cases supporting evidence will be requested.
- 5.8 The OVM will liaise with the Overseas Visitor Finance Lead to ensure charges are collected.

## **6. CHARGING PATIENTS**

- 6.1 Patients charged under the Charging Regulations are NHS Charged Patients and should not be confused with private patients. NHS Charged Patients are liable to pay for their treatment even where an undertaking to pay has not been obtained.
- 6.2 The Trust will charge patients who are unable to sufficiently support their claim to an exemption. A patient can claim reimbursement at a later date providing that sufficient evidence can be produced to show that he or she was entitled to free treatment at the time it was given.
- 6.3 Where the patient is liable for the charges, the patient will be invoiced and not the PCT.

- 6.4 Where treatment is provided in advance of payment the patient will be asked to sign an undertaking to pay form. However, the overseas visitor will be liable to pay the debt whether or not they sign an undertaking to pay form.
- 6.5 Solent NHS Trust will recover the full cost of the treatment given to an overseas visitor using the latest DH Non-Contract Activity guidance.
- 6.6 Further guidance on financial issues can be found in Chapter 6, Appendix 1.

## **7. REPORTING REQUIREMENTS**

- 7.1 There is no national reporting requirement for NHS Charged Patients except where the patient cannot/ does not pay which should be reported to Overseas Healthcare Team at the Department of Work and Pensions via the Overseas Visitor Treatment (OVT) web portal.
- 7.2 Solent NHS Trust will follow the reporting requirements for EU/EEA visitors who have any planned or unplanned treatment including treatment that may be exempt under service exemptions in Regulation 6. EHIC data and treatment provided will be recorded and reported by the OVM to the Overseas Healthcare Team at the Department of Work and Pensions via the Overseas Visitor Treatment (OVT) web portal. Chapter 7 of Appendix 1 details specific requirements for visitors from Europe.

## **8. TREATMENT PRIORITY**

- 8.1 The treatment of NHS charged patients is subject to the same clinical priority as other NHS patients. The beds they occupy are not pay beds and consultants cannot charge them for their services.
- 8.2 Where overseas visitors are not entitled to free NHS care clinicians will make an assessment of their clinical priority. This is set out in detail in Chapter 4 of Appendix 1 and in summary below.
  - a. Immediately necessary treatment will be provided to any patient, even if they have not paid in advance. Failure to provide immediately necessary treatment may be unlawful under the Human Rights Act 1998. Immediately necessary treatment includes all maternity services. The Trust will pursue payment where appropriate following treatment.
  - b. Urgent treatment - will also be provided to any patient, even if deposits have not been secured. The Trust will pursue payment where appropriate following treatment.
  - c. Non-urgent treatment will not be provided unless the estimated full charge is received in advance of treatment.

## 9. ROLES & RESPONSIBILITIES

### **Solent NHS Trust has a responsibility to:**

- 9.1 Ensure that the Charging Regime operates effectively.

### **The Trust Lead for Overseas Patients has a responsibility to**

- 9.2 Ensure that appropriate processes are in place to support the management of Overseas Patients and in accordance with this policy and legal requirements.
- 9.3 The Trust Lead for Overseas Patients will be a person of sufficient seniority to be able to deal with clinicians, other senior trust managers and members of the public. They will be given the authority to ensure that the charging of appropriate patients is robustly implemented adopting a consistent approach.
- 9.4 The Trust Lead will maintain a register of all Overseas Patients who have received health services from the organisation.
- 9.5 In the event of a dispute, the Trust Lead for Overseas Patients must be available to provide advice / resolution.

### **Service Managers have a responsibility to:**

- 9.6 Ensure all staff are aware of this policy and that they have been offered training in the use of the policy.
- 9.7 Ensure staff within the service are aware of the record keeping required
- 9.8 Comply with Solent NHS Trust monitoring of this Policy.

### **Stage One Interviewers have a responsibility to:**

- 9.9 Apply the baseline question process to every patient entering the Trust, record responses and evidence and refer those patients whose status is unable to be determined to an OVM.
- 9.10 The Stage One Interviewer is all staff (medical, nursing and admin staff) who form part of an admin team for each service is responsible for admitting patients or making appointments e.g. admissions clerk, receptionist etc to the Trust.

### **Overseas Visitor Managers (OVMs) - Stage Two Interviewers have a responsibility to:**

- 9.11 Act as the first point of contact for queries relating to the assessment and charging of overseas patients.
- 9.12 Assess the eligibility status of a patient that has been referred via the stage one interview process.
- 9.13 Conduct a stage two interview, deciding if a patient is liable for charges for the cost of NHS services.
- 9.14 Have a thorough understanding of the Charging Regulations and guidance and be trained on interviewing techniques and handling difficult situations. The OVM will be fully aware of policies on Complaints, equality and have links to the Patient Experience Team.
- 9.15 Each clinical Division will have at least one OVM.

**Clinicians have a responsibility to**

- 9.16 Provide appropriate care for their patients and to make decisions on their treatment based on their clinical needs. As part of their normal practice, for ordinarily resident patients and chargeable overseas visitors alike, clinicians have an obligation to consider the costs associated with different treatment options and to balance these against the potential for a successful outcome. Clinicians will advise OVMs on the urgency of treatment.

**Overseas Visitor Finance Lead has a responsibility to**

- 9.17 To recover the debt and ensure the regulations are adhered to in relation to invoicing, the accounts and debt recovered.

**10. TRAINING**

- 10.1 The requirements of this policy will be brought to the attention of all those responsible for making appointments and treating patients.
- 10.2 Line managers will be required to ensure their respective staff are made aware of this policy when this is cascaded through usual dissemination routes.
- 10.3 The Trust Lead for Overseas Patients will provide advice, training and support to Overseas Visitor Managers and other Solent NHS Trust staff.
- 10.4 Solent NHS Trust recognises the importance of appropriate training for staff. *For training requirements and refresher frequencies in relation to this policy subject matter, please refer to the Training Needs Analysis (TNA) on the intranet.'*

## 11. EQUALITY & DIVERSITY AND MENTAL CAPACITY ACT

11.1 An equality Impact Assessment form relating to this policy has been completed and was submitted with the policy during the ratification process, please see Appendix 2.

## 12. SUCCESS CRITERIA / MONITORING THE EFFECTIVENESS OF THE DOCUMENT

7.1 This Policy will be reviewed by the Document Manager on the date shown on page one or before if any changes are necessary, or as a result of audit, evaluation or incident.

7.2 The following monitoring arrangements will be put in place.

Audit Activity	Process for monitoring compliance	Evidence required to support compliance	Frequency	Responsibility of	Designated Committee
Compliance with identification of NHS Charged Patients through baseline questioning and interviews	Audit of patient registration documentation, interview records, evidence, reasoning for decisions.	Report to Business Innovation	Annually in one h for each division	Associate Directors	Business Innovation
Compliance with securing income from NHS Charged Patients	Review of potential income from all identified NHS Charged Patients, invoices raised, and income received/written off	Report to Business Innovation	Annually	OV Finance Lead	Business Innovation
Compliance with reporting	Review of submissions to DWP for exemptions	Report to Business Innovation	Annually	OVM	Business Innovation

## 13. REVIEW

13.1 This document may be reviewed at any time at the request of either at staff side or management, but will automatically be reviewed twelve months from initial approval

and thereafter on a bi-annual basis unless organisational changes, legislation, guidance or non-compliance prompt an earlier review.

13.2 Further national guidance is due to be issued in 2011 and future consultation is planned to take place in 2012.

#### **14. REFERENCES AND LINKS TO OTHER DOCUMENTS**

- NHS (Charges to Overseas Visitors) Regulations 2011. 1 August 2011.
- DH. Guidance on Implementing the Overseas Visitors Hospital Charging Regulations. August 2011.
- NHS Finance Manual Chapter 22a Visitors from the EEA and Switzerland Provided with NHS Treatment and Chapter 22b non EEA Overseas Visitors.
- Hampshire and Isle of Wight Health Protection Unit  
0845 055 2022 9am -5pm, Mon -Fri.  
[hiowhpu@hpa.org.uk](mailto:hiowhpu@hpa.org.uk)  
To contact Health Protection on call in an emergency out of hours call  
0844 967 0082

# Appendix 1

## Guidance on Implementing the Overseas Visitors Hospital Charging Regulations, Department of Health, August 2011



DH guidance  
2011.pdf



appendix 1.pdf



appendix 2.pdf



appendix 3.pdf



appendix 4.pdf



appendix 5.pdf



appendix 6.pdf



appendix 7.pdf



equality analysis.pdf

## Appendix 2

Step 1 – Scoping, identify the policy's aims	Answer
1. What are the main aims and objectives of the policy?	<p>To set out the rules and regulations governing the identification, treatment and charging of overseas visitors and provide advice and guidance on implementation.</p> <p>Adherence to this policy should that the Trust meets its legal and ethical obligations in regard to overseas visitors.</p> <p>To inform staff of their operational and legal responsibilities.</p>
2. Who will be affected by it?	All patients.
3. What are the existing performance indicators / measures for this? What are the outcomes you want to achieve?	Monitoring and review to ensure the process is complied with and is applied to all patients without discrimination. Patients who are not entitled to NHS Treatment are identified, treatment is provided where appropriate, patients are charged and income is secured.
4. What information do you already have on the equality impact of this policy?	This policy is designed to ensure that in the application of the Charging Regulations all patients are treated in the same way.
5. Are there demographic changes or trends locally to be considered?	No.
6. What other information do you need?	None.

Step 2 – Assessing the impact, consider the data and research	Yes	No	Answer (Evidence)
1. Could the policy be used unlawfully against any group?		X	This policy is designed to ensure equity of treatment and adherence to legal requirements.
2. Can any group benefit or be excluded?		X	All groups would be treated equally in accordance with the stipulations of the policy.
3. Can any group be denied fair and equal access to treatment as a result of this policy?		X	As above.
4. Can this policy actively promote good relations with and between	X		All groups are treated equally and in accordance with legal

different groups?			requirements.
5. Have you carried out any consultation internally / externally with relevant individual groups?	X		Internal consultation only.
6. Have you used a variety of different methods of consultation / involvement?	X		Discussion
7. Mental Capacity Act Implications?	X		This policy offers no direction regarding clinical decisions in relation to the capacity of the patient to consent to treatment.
8. Will this policy require a decision to be made by or about a service user? (Refer to the Mental Capacity Act policy for further information)	X		This policy sits alongside clinical policies. It offers no direction regarding clinical decisions for patients who lack capacity to consent to treatment.