

Primary Care Medical Services Branch
DHSSPS
D3 Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

8 April 2013

To whom it may concern

Consultation on Overseas Visitors Access to Health Services in Northern Ireland

As Commissioner for Children and Young People it is my principal aim, as set out in legislation, to promote and safeguard the rights and best interests of children and young people in Northern Ireland. I welcome the opportunity to respond to the current consultation but would note that this submission is not intended to be comprehensive but rather highlights key concerns in relation to children.

It is important to firstly recognise the obligation placed on government and statutory agencies to ensure that children and young people have access to care and treatment which will enable them to fully enjoy their rights under the United Nations Convention on the Rights of the Child (UNCRC). This includes the UNCRC right to life, survival and development to the maximum extent possible as set out in article 6 and the right to enjoy the highest attainable standard of health as outlined in article 24 of the Convention. Government must also meet its obligations under other human rights instruments including the Human Rights Act (1998) and the International Covenant on Economic, Social and Cultural Rights.

Whilst I acknowledge, as set out in the document, that maintaining a policy which balances cost, public health, migration and humanitarian principles may be challenging, I would note that in relation to children and young people, their rights and best interests should remain paramount at all times. Following the UK Government's decision to remove its reservation to article 22 of the UNCRC concerning children subject to immigration control, NICCY would also highlight that the principles of the Convention apply to all children living in the UK regardless of their immigration status.



Current arrangements concerning access to healthcare in Northern Ireland which is based on residency status are complex, include exemptions for certain groups of individuals or categories of healthcare and are more restrictive than other UK jurisdictions due to the policy intent of limiting access to treatment by Republic of Ireland residents. However, restrictions to entitlement impact beyond limiting access from the Republic and significantly affect migrant groups including undocumented or irregular migrants, some refused asylum seekers, some EU Accession 2 country nationals, may also limit access by victims of trafficking and do restrict access by children of parents across all these categories.¹

While simplifying arrangements for access to health services would be welcome this should not result in the entrenchment or extension of restrictions, particularly for children and young people whose entitlement is currently determined by the immigration status of family members. It is important that all children living in Northern Ireland are provided with access to primary and secondary healthcare services and it is unhelpful to separate entitlement to primary from secondary care when considering children's overall health needs. For example, as children move through development stages, failures in the early identification and treatment of conditions and illnesses, including long term and chronic conditions, which are often carried out in primary care settings will lead to an increased likelihood of these deteriorating and requiring more substantive intervention. While such treatment may not be deemed 'emergency' or 'immediately necessary', lack of early and ongoing primary care intervention will increase the need for access to emergency, hospital and rehabilitative care.

It is also important to note that infants and children should have access to other services which are often delivered through primary care including vaccinations (which have broader public health benefits), prescription medicines (particularly to minimise risks of 'self' medication) and access to referral routes to allied health professionals and specialist doctors or surgeons. The Department should acknowledge the particular health needs of some migrant and asylum seeking children including, for instance, the importance of providing referral mechanisms to mental health services.² It is therefore of great concern that children and families in the groups highlighted above may be refused GP registration or be de-registered by the Health and Social Care Business Services Organisation. Indeed, NICCY notes that the Human Rights Commission has advised that the link between entitlement to primary healthcare and the ordinarily resident criteria should be reviewed.³

¹ Law Centre NI (2013) Briefing paper on access to healthcare - Accessing primary healthcare for migrant groups: problems, DHSSPS proposals and solutions, (Belfast: Law Centre NI).

² The Children's Society (2012) I don't feel human: Experiences of destitution among young refugees and migrants, (London: The Children's Society).

³ NIHRC (2011) Access denied - or paying when you shouldn't: Access to publicly funded medical care, residency, visitors and non-British/Irish citizens, (Belfast: NIHRC).

In further considering the Department's stated commitment to ensuring that emergency and necessary care is provided (subject to subsequent charging depending on exemption status), NICCY would observe that the principle of charging may negatively impact on families seeking medical assessment and care, regardless of whether in practice payment may be actively pursued. This includes parents or carers being concerned about the financial consequences of seeking treatment and the implications of this for their immigration status. This could include, incurring debts, debts being reported to UKBA and this then being a factor which is considered in, for example, new visa applications.

NICCY would also highlight the particular obligations the UNCRC places on government to reduce infant and child mortality and provide appropriate pre and post natal care. NICCY is aware of particular concerns in this area and notes that the Department should ensure that all pregnant women have the access to maternity services. In considering other aspects of the consultation, NICCY welcomes the intention that a legal guardian should have parity with the parent of child to address circumstances, such as private fostering arrangements, where a child is living with a relative in Northern Ireland. It is also helpful that the document provides assurance that healthcare staff will not undertake age assessments and NICCY notes that robust safeguards must be put in place to ensure this does not happen.

NICCY supports the proposal to include an exemption category for unaccompanied children and separated children in the care of social services. It is important that this exemption encompasses all children who are in the care of the state including those who have 'looked after' status as well as those who are subject to a Care Order. The Department must also carefully consider the situation of separated children and young people who may not be in the care of the state and ensure there are no barriers to their access to healthcare. While NICCY welcomes the introduction of an easement clause to ensure a child, on becoming an adult or leaving care, continues to receive treatment we note that Health and Social Care Trusts should be directed not to pursue charges when a child has been treated and then comes into the care of the state.

It is of great concern that the proposals consider an exemption from charging for children with families only in circumstances where their parents are cooperating with UKBA (including failed asylum seekers and those supported under Sections 4 or 95 of the Immigration and Asylum Act 1999). As noted previously, NICCY is not of the view that children's access to care and treatment should be determined by the status or actions of their parents. We would further note the problematic nature of linking entitlement to the conditions outlined as, for example, support under Sections 4 or 95 of the Immigration and Asylum Act 1999 does not apply to all asylum seekers and that status in both receiving such support and in relation to UKBA is subject to change and disruption.⁴

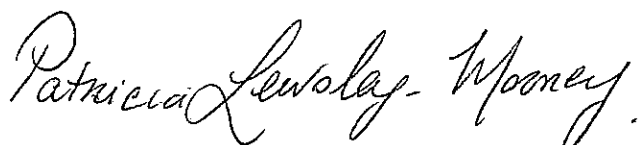
⁴ Law Centre NI (2013) Briefing paper on access to healthcare - Accessing primary healthcare for migrant groups: problems, DHSSPS proposals and solutions, (Belfast: Law Centre NI).

In relation to the proposal that individuals applying for refugee status will be exempt from charges until a final decision is made, NICCY notes that while allowing this group entitlement to services is welcome, it should apply to the full range of categories of protection that can be granted and must recognise that an individual can appeal a final determination. Indeed, the Department should seek to ensure entitlement is provided to all asylum applicants regardless of status as is currently the case in Scotland and Wales. In relation to access to treatment for STIs and HIV/AIDS NICCY supports full exemption as proposed in England.

In conclusion, NICCY would draw attention to the significant equality and human rights implications of the proposals, particularly in relation to children and young people. All children and young people in Northern Ireland should have access to care and treatment which protects their rights and best interests and enables them to enjoy the highest standard of attainable health. This consultation offers an opportunity for the Department to ensure that arrangements are proportionate to the original stated policy intent of restricting use by Republic of Ireland residents. In circumstances where government may seek to introduce restrictions to healthcare entitlement there must be a clear evidence base for this and any measures must accord with international and EU standards. This includes reflecting the principles of proportionality and non discrimination and acknowledging the special obligations placed on government in relation to children's and maternity services.

Do not hesitate to contact my office if you require any further information.

Yours sincerely

A handwritten signature in black ink that reads "Patricia Lewsley-Mooney". The signature is written in a cursive, flowing style.

Patricia Lewsley-Mooney
Commissioner for Children and Young People