

Response from the Equality Commission for Northern Ireland to the consultation by the Department for Health, Social Services and Public Safety: *“Proposed consolidation and updating of the Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005, including amendments to specific provisions and extension to primary care services”*.

April 2013

1. The Equality Commission for Northern Ireland (the Commission) welcomes the opportunity to comment on the changes to the regulations governing the provision of health services to people not ordinarily resident in Northern Ireland as proposed by the Department of Health, Social Services and Public Safety (the Department).
2. The Commission acknowledges that there is not an obligation on the state to provide free treatment for all and that there has been a long-standing policy of charging overseas visitors (with some exemptions) for most treatment.
3. We are aware of the conclusion of the Northern Ireland Human Rights Commission (NIHRC), in its report on access to publicly funded medical care for visitors and non-British/Irish citizens¹, that while there is no absolute right to affording equality of access to medical care for all without discrimination, including to migrants of whatever status, the onus is on the state to provide justification that any restrictions are proportionate, otherwise they could be held to constitute racial discrimination. NIHRC pointed out that there are certain core minimum obligations which should not be subject to restriction, including access to primary care, and emergency treatment when the life of any individual is at risk or when to withhold

¹ Northern Ireland Human Rights Commission (2011): *Access to publicly funded medical care: residency, visitors and non-British/Irish citizens*, page 46.

treatment would be inhuman or degrading. Special obligations also exist in relation to provision for maternity and children's services.

4. Furthermore NIHRC recommended that the Department should review its position with a view to revoking the policy link to an ordinary residence requirement with respect to primary care².
5. The Equality Commission notes that neither the consultation nor screening documents make any reference to the NIHRC report, although it clearly falls within the category of relevant qualitative data. Furthermore, the screening document does not refer to a number of relevant issues related to BME groups identified in the Department's Equality Action Plan³, including:
 - marginalised women (Traveller women and Black and Minority Ethnic (BME) women etc) have difficulty in accessing maternity services;
 - higher maternal and infant mortality among BME groups;
 - domestic violence experienced by ethnic communities;
 - lack of clarity on the rights and entitlements of the different categories of Migrant Workers.
6. In addition, the screening document includes three sets of statistical data in an Annex A but does not provide any contextual explanation of their relevance or source.
7. Turning to the content of the consultation document, the Commission agrees with the Department that Option (iv), to extend the exemptions allowing entitlement to Secondary Care to non-residents to Primary Care so that treatment could be accessed through this route where more appropriate, is the most appropriate option.
8. The Commission broadly welcomes the proposals set out in the document which extends a number of the existing exemptions to:
 - embrace those using any legal route to seek refuge in the UK;

² NIHRC (2011) Op. Cit., page 47.

³ DHSSPSNI (April 2012): *Equality Action Plan for the Department of Health, Social Services and Public Safety*, (Version 1.1).

- increase the period that persons can be absent from the country without being liable for healthcare charges from 3 to 6 months;
 - cover unaccompanied children in the care of social services;
 - include failed asylum seekers receiving support under Sections 4 and 95 of the Immigration and Asylum Act 1999;
 - enable any legally required treatment to be given without charge;
 - encompass treatment in primary care as well as in secondary care.
9. The Commission recommends that guidance for social services professionals is provided in respect of the right to healthcare for unaccompanied children not ordinarily resident who are in the care of social services.
 10. The Commission acknowledges the proposals to clarify the rights of persons under the Convention on Social and Medical Assistance⁴. The Department should make information setting out the rights of persons under the Convention accessible and available in appropriate formats and languages.
 11. The Commission welcomes the proposal to ensure that the ‘legal guardian’ has parity with the parent of a child under the regulations as an acknowledgment of the variety of family structures present in contemporary society.
 12. In relation to the options on amending the STI exemption in relation to HIV/Aids, the Commission considers that the complete exemption as proposed in England (option iii), with a view to restricting the misuse by short term visitors via clinical guidance, is the option which will provide a service which addresses the needs of the widest range of those persons not ordinarily resident who have HIV/Aids.
 13. The Commission is concerned that the proposal to amend the wording of the Accident and Emergency exemption to better reflect

⁴ The Convention is mistakenly referred to in the consultation document as an EU Convention when, in fact, it is a Council of Europe Convention whereby States Parties undertake to ensure that the nationals of other Parties, who are lawfully present in their territory and who are without sufficient resources, are entitled to the same social and medical assistance as their own nationals.

policy intent may have an adverse impact on Travellers⁵ and Roma, both of which groups tend to have recourse to accident and emergency rather than primary care and therefore recommend that the Department consider an alternative policy or mitigating measures to address this prior to finalising the regulations.

14. Finally, in our role as part of the independent mechanism tasked with promoting, protecting and monitoring implementation of the Convention in Northern Ireland (see Annex 1 below), the Commission wishes to draw the attention of the Department to Article 25 (a) of the United Nations Convention on the Rights of Persons with Disabilities which requires that States Parties shall provide persons with disabilities with the same range, quality and standard of free and affordable health care and programmes as provided to other persons.

Legal, Policy and Research Division

April 2013

⁵ *'The tendency was to avoid primary care services until health problems became acute or serious enough to necessitate the use of A & E services'* (School of Public Health and Population Science, University College Dublin (September 2010): *All Ireland Traveller Health Study, Our Geels, Summary Findings*, page 132).

Annex 1: The Equality Commission for Northern Ireland

1. The Equality Commission for Northern Ireland (the Commission) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Commission's remit also includes overseeing the statutory duties on the Department to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards disabled people and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.
3. The Commission's general duties include:
 - working towards the elimination of discrimination;
 - promoting equality of opportunity and encouraging good practice;
 - promoting positive / affirmative action
 - promoting good relations between people of different racial groups;
 - overseeing the implementation and effectiveness of the statutory duty on relevant the Department;
 - keeping the legislation under review;
 - promoting good relations between people of different religious belief and / or political opinion.
4. The Equality Commission, together with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the rights of Persons with Disabilities (UNCRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of the Convention in Northern Ireland.