

## ACADEMY HEALTH INEQUALITIES FORUM (AHIF) POSITION STATEMENT

### FAILED ASYLUM SEEKERS / VULNERABLE MIGRANTS AND ACCESS TO PRIMARY CARE

#### Background

Regulations from the Department of Health (England) which came into force on 1 April 2004 identified groups who were not considered “lawfully resident” in the UK and made them liable for National Health Service hospital charges. Subsequently, a consultation in May 2004 proposed to extend the charging regime to Primary Care, including access to GP services. The aim of the draft legislation was to restrict access to NHS care for overseas visitors with the declared intention of reducing abuse of the NHS by what are termed “health tourists”. Although, to date, there has been no published government response to the 2004 consultation, a recent cross-Government enforcement strategy has been published, *‘Enforcing the Rules’*. This suggests that primary care be brought into line with the regulations that exist for secondary care. The Home Office document describes the purpose of the strategy as “To ensure that living illegally becomes ever more uncomfortable and constrained until they leave or are removed.”

#### AHIF Position

GP practices have the discretion to accept Failed Asylum Seekers as registered NHS patients. Following an appeal by the Department of Health against a High Court Ruling that failed asylum seekers should be entitled to free healthcare, the Court of Appeal made a judgement in March 2009 that “failed asylum seekers cannot be considered to pass the ordinary residence test, nor can they be considered exempt from charges by virtue of spending one year in the UK.” They also found that “Trusts have the discretion to withhold treatment pending payment and also the discretion to provide treatment where there is no prospect of paying for it.” However, the NHS List of Entitlements (April 2009) states that this ruling does not affect access to primary care.

Based on the principle that General Practitioners, along with all other health professionals, have a duty of care to all people seeking healthcare, the Academy Health Inequalities Forum (AHIF) believes that healthcare professionals should not be expected to police access to healthcare and turn people away when they are at their most vulnerable. We are concerned that differences in approaches to enabling entitlement to NHS healthcare will lead to inequity, confusion and delay in providing necessary health services for this group. In addition to failed asylum seekers, we would urge the government to consider the health needs of other migrant groups, who we feel should also be entitled to free primary care.

#### AHIF urges the Government:

- to revisit the issue of differing entitlements to healthcare within primary and secondary care and its effects on patients, professionals, public health and the health economy generally

- to commission independent and wide ranging social, race, health and impact assessments of any proposed changes to primary care entitlement. These assessments should include, but not exclusively cover, issues such as vaccination coverage, outbreaks of communicable diseases, antenatal, perinatal, infant and child health including mortality; maternal health and mortality; and the health and social wellbeing of women and men who are abused or exploited at home or elsewhere, sexually or in other ways. These assessments should also include effects on inequalities in health
- to examine the compatibility of any proposals with the international human rights obligations of the UK, including those, but not exclusively, covering children
- to re-examine the proposals in the light of the evidence generated by the above assessments
- to consult and work with the professional regulatory bodies and defence organisations around the ethical and professional implications of policy regarding access to healthcare for failed asylum seekers
- to commission independent, continuous, monitoring of access to health care and of the health needs of refugees and undocumented migrants
- to explore and implement modes of mitigating or reversing adverse effects of excluding migrants from free access, such as non-compliance with necessary prevention and treatment for fear of being presented with bills that cannot be paid. Mitigating measures may include annulment or non-enforcement of payment requests and compensation for Hospitals, General Practices and other NHS organizations from central funds
- to issue guidance to overseas visitor managers and similar officers in NHS organisations and general practices that they shall deal with vulnerable migrants in a sensitive way that will not undermine migrants' health
- to monitor the approach to vulnerable migrants of healthcare professionals, other staff and overseas visitor managers and similar officers in NHS organisations and general practices
- to particularly commit itself to the protection of children and pregnant women.

**AHIF bases its position on the following:**

- There is no evidence that asylum seekers enter the country because they wish to benefit from free health care
- Asylum seekers are exercising a legal right to seek refuge from persecution
- The Government's proposed policy will have the effect of leaving some vulnerable people in the UK without any access to health care
- There is an adverse effect on infant mortality and children's health in particular
- Denying free access to primary care could increase the likelihood of serious communicable diseases not being detected
- There could be deleterious effects on the health care and support for exploited women
- Health inequalities policies could be undermined
- Additional stress would fall on A&E services if access to primary care is restricted
- Such a change in policy infringes the basic human rights obligations of the UK.

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