



Overseas chargeable patients, NHS debt and immigration rules

Guidance on administration and data sharing

Published 26 March 2019

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1. Introduction

- 1.1 This manual of guidance supersedes all previous guidance on administration and data sharing of NHS debt.
- 1.2 This guidance refers to 'relevant bodies'. These are organisations that are required to make and recover charges under the National Health Service (Charges to Overseas Visitors) Regulations 2015, which has been amended most recently by the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017. These organisations are NHS trusts, NHS foundation trusts and local authorities in the exercise of public health functions in England and, since 23 October 2017, any provider of relevant services including non-NHS organisations such as private and voluntary providers supplying relevant services.
- 1.3 In order to allow better recovery of NHS debts, and following a public consultation in 2010, the Home Office amended the immigration rules to include an unpaid debt of £1,000 or more by a person subject to immigration control as a ground to refuse an application for a new visa or extension of stay. These rules came into force on 31 October 2011 and apply to invoices raised for treatment provided by NHS hospitals from 1 November 2011 onwards.
- 1.4 The immigration rules were then amended, with changes coming into force on 6th April 2016. This amendment means:
 - a) in respect of relevant NHS services provided from 1 November 2011 up to, and including 5 April 2016, relevant bodies must notify the Home Office of outstanding debts of £1000 or more that have been outstanding for 3 months or more*; and
 - b) in respect of relevant NHS services provided on, or after, 6 April 2016, relevant NHS bodies must notify the Home Office of outstanding debts of £500 or more that have been outstanding for 2 months or more*.

* Note: the time period starts from when the patient is formally charged, usually with an invoice, rather than from the date of treatment, which might be an earlier date.
- 1.5 Relevant bodies must support the administration of these rules to improve the recovery of debts by providing relevant information to the Home Office. Provision of this information must take full regard of data protection, information security and patient confidentiality duties. It is important that this guidance is followed closely to ensure that these duties are met and that the immigration rules are applied fairly and lawfully.

2. Why should relevant bodies supply debtor information to the Home Office?

2.1 Relevant bodies must provide relevant debtor information to the Home Office and thereby improve the recovery of NHS debts. The scheme is an important part of the cost recovery process for the NHS when recovering costs of treatment, as it:

a) encourages overseas visitors with outstanding NHS debts to pay promptly or to enter into a reasonable repayment plan; and

b) potentially prevents additional outstanding debts being incurred by an overseas visitor who wishes to return to the UK to receive further treatment without the means to pay.

3. Informing the Patient

3.1 It is important that patients who incur a charge for NHS services are made aware that failure to pay their healthcare bills could result in a future immigration sanction under the Home Office rules if it remains unpaid.

3.2 Chargeable patients should therefore be made aware or reminded at the earliest point at each key stage of interaction, in particular:

- Initial registration and screening for liability for NHS charges;
- At the point of invoicing; and
- Follow up requests pursuing outstanding payment by the hospital or any agency it may have contracted.

Finance departments need to ensure that they are able to issue invoices promptly, perhaps at very short notice, in order to ensure that the invoice can be presented, wherever possible, before the patient leaves the provider of the relevant services.

Registration forms should already include advice on information sharing with the Home Office and other Government agencies. These should include reference to the immigration rules. You are advised to use the model forms and letters which are available for download from the Overseas Visitor Manager toolbox on <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>.

3.3 For pre-attendance forms and invoices/undertaking to pay documents:

If you fail to pay for NHS treatment for which charges have been applied, it may result in a future immigration application to enter or remain in the UK being denied. Necessary non-clinical personal information may be passed via the Department of Health and Social Care (DHSC) to the Home Office for this purpose.

3.4 For letters following up on unpaid debts. The second paragraph is important to mitigate against any delay in updating shared records:

You should be aware that under paragraphs 320(22) and 322(12), and 3.14 of Appendix V, of the Immigration Rules, a person with outstanding debts of over £500 for NHS treatment that is not paid within two months of invoicing, may be denied a further immigration application to enter or remain in the UK.

In the absence of prompt full settlement or an accepted reasonable repayment schedule, non-clinical information relating to this debt is provided routinely to the Home Office and may be used by the Home Office to apply the above Immigration Rules. The Home Office will keep your personal information for as long as it is necessary for permitted purposes. In the borders, immigration and citizenship system, the Home Office maintain a long-term record of immigration history and immigration offending to support future decision-making and enforce penalties. More information can be found in the [borders, immigration and citizenship privacy information notice](#).

In the event that you may seek entry to the UK or make an immigration application after settling an NHS debt in the previous two months, you are advised to retain and carry evidence of payment for potential examination by Home Office officials.

- 3.5 Where an invoice is particularly large, or where the patient is genuinely willing to provide payment for services provided but cannot meet repayment in full, then Trusts should agree with the patient, at the earliest opportunity, a reasonable repayment plan (see details below on what constitutes a reasonable repayment plan).

What constitutes a reasonable Repayment Plan?

- 3.6 The repayment needs to be reasonable to allow for the debt to be repaid within a realistic timeframe. The financial circumstances of the individual must also be taken into account and agreement of the terms of the repayment plan reached between the debtor and relevant body. Relevant bodies will therefore need to consider the individual's particular circumstances such as amount of disposable income against the amount of the debt to decide whether a repayment plan is reasonable. Any repayment plan should be agreed by the relevant body's finance department (or equivalent) at the appropriate level. Please ensure that you take into account all necessary legal and compliance issues when entering into repayment plans.
- 3.7 Payments of a specified amount will need to be made on a specified date, preferably by direct debit or standing order.
- 3.8 The individual should be made fully aware of the consequences if the plan is not adhered to i.e. the relevant body will notify the Home Office of the outstanding debt.

4. Criteria for referring debtor information to the Home Office

4.1 Information relating to cases of outstanding debt owed by a person should only be shared when all of the following criteria are met:

a) For charges relating to NHS treatment from 1st November 2011 until 5th April 2016

- Single or multiple invoice debts amount to £1,000 or more; and
- The debt has been outstanding for three months or more. The time period starts from when the patient is formally charged, usually with an invoice, rather than from the date of treatment, which might be an earlier date.

b) For charges relating to NHS treatment from 6th April 2016 onwards

- Single or multiple invoice debts amount to £500 or more;
- The debt has been outstanding for two months or more. Note: The time period starts from when the patient is formally charged, usually with an invoice, rather than from the date of treatment, which might be an earlier date.

c) For all charges

- Charges relate to NHS and not private treatment;
- There are no genuine outstanding challenges to, or doubt about, the legitimacy of the charge;
- No reasonable arrangement has been made, and is being adhered to, for a schedule of payments to clear the debt. If a patient has entered into a repayment plan, and then subsequently cancels that plan, NHS bodies should submit the debt information to the Home Office as described. Further information on repayment plans can be found in Section 3;
- The debt has not been cancelled; and
- The person is not: an EU citizen; a national of an EEA country or Switzerland; a person who is a dual national where one of those nationalities is British or EU/EEA; or a person from a Third Country (i.e. non-EEA) who has rights of residence because of their relationship with an EU citizen. Note: It is unlawful to apply the immigration restriction to an EU citizen or a national of an EEA

country or Switzerland as it would be counter to their rights under the Free Movement Directive. Nationals of other countries who have a right of residence because of their relationship with an EU citizen will also attract these rights (for instance if they are the EU citizen's primary carer or are economically dependent on the EU citizen). Note: Agreements with the EU to come into force following the UK's exit from the EU are in negotiation. This section will be updated as necessary in due course.

- 4.2 Whilst it is not necessary to seek the patient's consent before sharing their personal information with the Home Office, it is best practice to inform them that you have done so or are going to do so and why. This may encourage the overseas visitor to pay the debt or enter into a reasonable repayment plan. There is a leaflet about data sharing with the Home Office available in the OVM Toolbox for this purpose.
- 4.3 While most of these criteria are factual, a local decision may be required for individual cases as to:
- Whether there is reasonable doubt over whether charges apply to the patient made under the Charging Regulations on which dialogue with the patient or their authorised representative is ongoing; and
 - Whether an agreed reasonable arrangement for scheduled payments is in place and is being maintained – see 3.6 - 3.8, above.
- 4.4 Staff of relevant bodies should not exercise judgement or discretion regarding other circumstances of individual cases (for example domestic or compassionate circumstances, age, connections with the UK). Relevant bodies should therefore continue to refer debtor information relating to such cases.

5. Additional points to bear in mind

- 5.1 Relevant bodies are expected to treat individuals fairly at all times.
- 5.2 Relevant bodies should consider whether there are any relevant circumstances that need to be taken into account, for example if the individual has a mental health condition or is in a vulnerable position. Where necessary relevant bodies might wish to use the services of professional teams and, if concerned about the welfare of any patient, should speak to their safeguarding teams. Please see chapter 7 of the [Guidance on Implementing the Overseas Visitor Charging Regulations](#) for further information when working with vulnerable patients.
- 5.3 Relevant bodies should also read paragraphs 13.63, 13.64 and 13.69 of the [main charging guidance](#) for further guidance about identifying and charging directly chargeable patients.

6. Details of the debtor information to be shared

- 6.1 The Home Office requires as many pieces of information as can reasonably be provided in order to verify the unique identity of the person who has incurred the debt. The DHSC provides a secure online database that relevant bodies should use when seeking to transfer the above information to the Home Office.
- 6.2 Further information may be provided on a case specific basis that may be helpful in tracing the individual. However, personal clinical information relating to treatment provided must not be included. Care should also be taken not to unnecessarily provide information from which the clinical history of the patient nor the nature of the medical condition and treatment can be deduced.
- 6.3 While not all required information will be available in every case, much will already be collected during patient registration or charging to support routine recovery of debts. It has been established that it is reasonable to collect any or all of the above information for the purposes of ensuring a contractual agreement to pay for services provided, as long as it is handled in accordance with data protection law and the NHS Confidentiality Code of Practice.

It is not permissible to refuse immediately necessary or urgent treatment in the event that information is withheld.

7. How debtor information should be shared with the Home Office

- 7.1 Relevant bodies with outstanding debts owed for NHS services in line with the listed referral criteria should collate the relevant information and pass it securely (in accordance with information security duties) to the NHS Visitor and Migrant Cost Recovery Team at the DHSC. The standard form should be used.
- 7.2 The information should be sent in response to the DHSC team's request for it, which is on a monthly basis. **However, updates on any change in the debt status (including payment, or agreement to pay leading to removal of the case) where it is known that a person plans to travel to the UK imminently should be sent immediately to the DHSC team and should not be held back for the following month's return, so that appropriate immigration decisions can be made.** The Trust may be liable for the consequences of any failure to inform such changes.
- 7.3 Relevant bodies should take care to ensure that they complete the form accurately. A step by step guide for relevant bodies on how to complete the monthly form is set out within the DHSC toolbox. Once a debt has been outstanding for two months from date of invoice (or outstanding for three months or more if invoiced before 6 April 2016), relevant bodies may wish to submit the information to the database rather than waiting until the end of the month.
- 7.4 The DHSC secure database will collate individual returns and DHSC will pass the data securely to the Home Office. The holding and/or transfer of all personal data must comply with the requirements of the Data Protection Act 2018 and General Data Protection Regulation 2018.
- 7.5 Home Office systems will validate the returned data, any errors will be returned to relevant bodies as a rejection report with the reason for rejection against each entry. These will be returned on a monthly basis outside the normal reporting.
- 7.6 Where the relevant body has contracted a commercial debt recovery company or agency to recover applicable outstanding debts on its behalf, please note that the debt recovery company or agency should be responsible for pursuing the debt only. Any information sharing with the Home Office should be directed from the relevant body. However, it should be recognised that the debt company will do so as an agent of the relevant body that will itself remain responsible for the due diligence of the process. Relevant bodies are reminded that debt collection agencies should not be employed in relation to persons whom it is clear to them will be unable to pay.

8. Use of the information by the Home Office

- 8.1 Home Office staff use the debtor information to identify individuals as they interact with immigration and border controls (which could be through online applications, at offices abroad or in the UK or at border points).
- 8.2 The Home Office is responsible for making an immigration decision. However, they may on occasion also encourage any voluntary payment of the debt between the individual and the relevant body or nominated debt agency prior to making that decision. In these situations, the relevant body or nominated debt agency may receive a direct approach from a debtor wishing to pay for previous treatment where this has contributed to the refusal of leave to enter or remain.
- 8.3 In some cases, these actions by the Home Office may require contact with the relevant body or the debt agency, either to check the accuracy of disputed information (e.g. through copy invoices or letters chasing payment), or to facilitate a payment. The Home Office will not take direct payment themselves. This will therefore require appropriate contact details to be available within reasonable office hours.
- 8.4 Where the status of the debt is disputed at ports outside of reasonable office hours, port officials have discretion to grant immigration bail and require the person to report for further interview at a later date. The port official will make further enquiries that may involve contacting the relevant body or agency. To avoid considerable inconvenience and potential complaint it is therefore extremely important that Debtor information is reported accurately and that debt repayment (including agreed repayment plans) is reported promptly so that up to date information on Debtor status is held on Home Office databases.
- 8.5 The immigration rules apply on a UK-wide basis and relate to NHS debts pertaining from chargeable NHS treatment in Scotland, Wales and Northern Ireland as well as England. Equivalent data-sharing and related processes are therefore in place in all four countries.

9. Roles and Responsibilities

9.1 The following sets out the separate responsibilities of bodies and agencies involved in the information collation & sharing and operational decision-making related to the immigration rules:

Relevant Bodies:

- Identify cases where patient debts trigger the criteria for potential immigration sanctions;
- Pass relevant information relating to these cases (including any subsequent payment or cancellation of the debt) to the DHSC Visitor and Migrant Cost Recovery Team;
- Mandate a third-party agency that manages debt recovery on their behalf to pursue the debt;
- Ensure that the handling process, whether carried out directly or through an agency conforms to all relevant aspects of this guidance;
- Remain responsible for the maintained accuracy of information provided (whether provided directly or through their third-party agency), in particular ensuring that any debt payment is accounted for;
- Provide a point of contact (directly or through their third-party agency) to facilitate information checks and/or debt payment;
- For audit purposes, securely keep local records of all submitted data. DHSC and Home Office do not hold full records of all data that is submitted and are not able to supply this information. This will also help NHS bodies ascertain when a NHS debt has been submitted to the DHSC and help with repayments of debts;
- Ensure that all local records contain accurate information about the patient, amount of debt etc, to support payment and any other administration of the debt; and
- Provide (directly or through their third-party agency) relevant case history to assist the Home Office with handling any disputed claims.

Department of Health and Social Care:

- Receive monthly returns from relevant bodies and contracted third party agencies, and validate their completeness (but not the accuracy of individual records);
- Hold all received data in accordance with information security and assurance processes as laid down by Cabinet Office. DHSC holds submitted data for three months only, for data protection reasons; and
- Pass a full record of returns by secure means to the Home Office.

Home Office:

- Make decisions on immigration applications with regards to any outstanding NHS debt, including any instances of discretion in exceptional individual circumstances;
- Make necessary checks with relevant bodies or their agents to verify information where its accuracy may be challenged;
- Hold all received data in accordance with information security and assurance processes as laid down by Cabinet Office;
- Publicise the rules and the implications of current or recent NHS debts for travellers to the UK;
- Retain data as set out in the [borders, immigration and citizenship privacy information notice](#) ; and
- Provide management information.

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Acute Care and Workforce/Provider Efficiency and Performance/NHS Visitor and Migrant Cost Recovery Programme

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