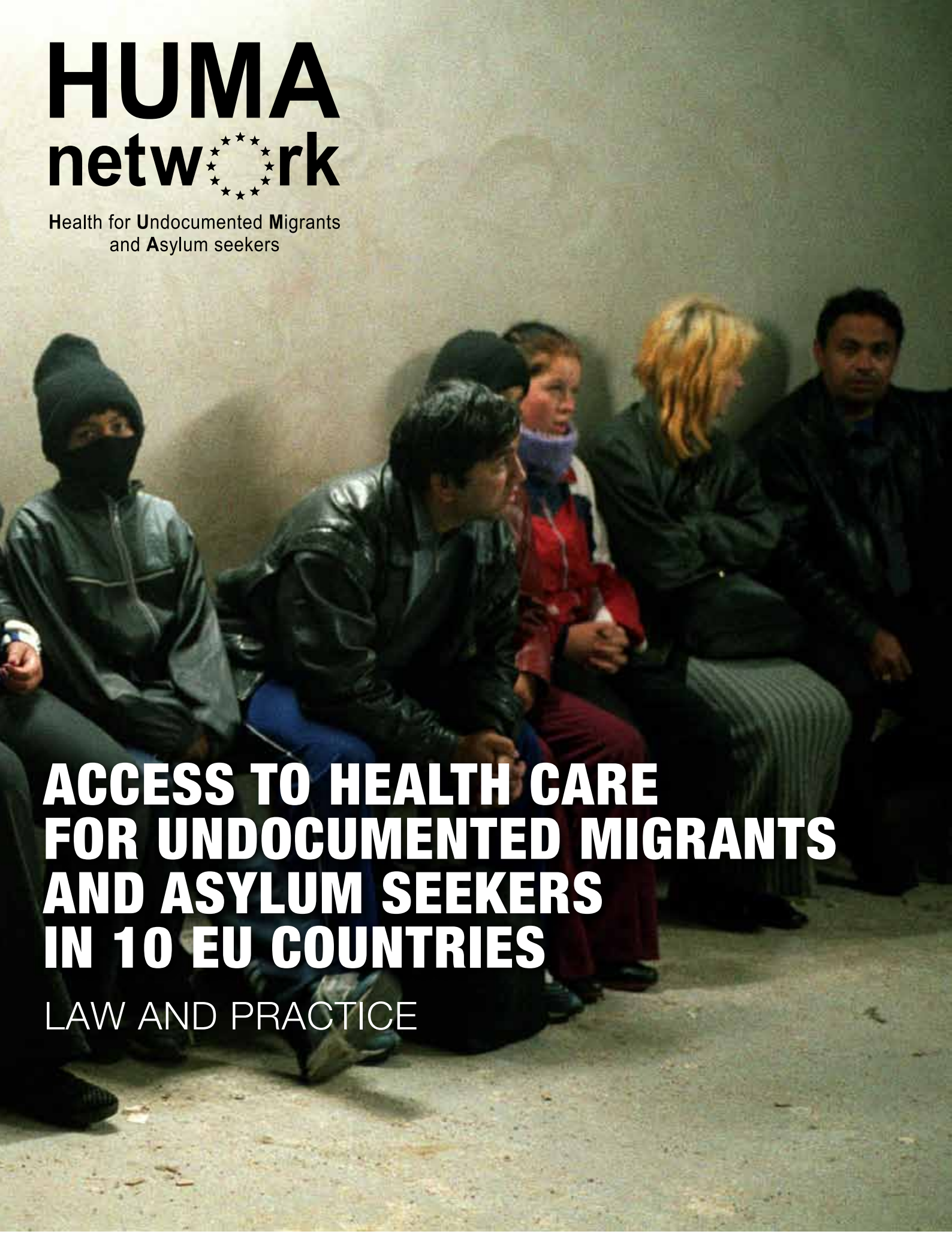
HUMA network

Health for Undocumented Migrants and Asylum seekers



ACCESS TO HEALTH CARE FOR UNDOCUMENTED MIGRANTS AND ASYLUM SEEKERS IN 10 EU COUNTRIES

LAW AND PRACTICE

LÄKARE I VÄRLDEN · MÉDICOS DEL MUNDO · ARTSEN VAN DE WERELD · DOCTORS OF THE WORLD · MÉDICOS DO MUNDO · MÉDECINS DU MONDE · ÄRZTE DER WELT · MEDICI DEL MONDO · SKOP

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Health for **U**ndocumented **M**igrants
and **A**sylum seekers

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CONTENTS

INTRODUCTION

The Global Commission on International Migration estimated in 2005 that between 4.5 to 8 million undocumented migrants live in the European Union (from 1,5% to 1.6% of the total population of Europe). In addition, the EU recorded 238,000 new asylum applications in 2008[1]. The size of this population and the extremely precarious living conditions in which they remain everywhere in Europe raise concerns for Human Rights advocates.

Access to health care of these populations is a very relevant topic that must be openly debated since they are not accessing health care in Europe at an acceptable level[2]. The first comparative study of the Médecins du Monde European Observatory of Access to Health Care that a five-country field survey in 2007 revealed the reality faced by undocumented migrants in Europe : undocumented migrants often do not access health care, even when they are entitled to it, mainly because of their fear of being denounced, their lack of information or the high costs of medical care which they cannot afford[3].

Access to health care for undocumented migrants and asylum seekers in Europe is directly linked to the issue of the fight against "illegal immigration", which has been a central concern of the European Union for at least a decade. Since the entry into force of the Amsterdam Treaty in 1999, Member States have concentrated their efforts on forging common systems of border control, preventing migrants from entering the European territory. At the same time, they have defined and started implementing a common asylum system. A series of directives was adopted between 1999 and 2004 by the European Union in order to design a comprehensive approach to the asylum issue among Member States. Recently, they have also organised the detention and deportation of undocumented migrants[4].

However in this context, no room has been left for debate on the question of rights (including health care) of undocumented migrants.

Nevertheless, International Human Rights instruments protect health care as a fundamental right. The International Covenant on Economic Social and Cultural Rights of the United Nations provides that States recognise *"the right to the enjoyment of the highest attainable standard of physi-*

1. UNHCR, *Asylum levels and trends in industrialised countries 2008. Statistical overview of asylum applications lodged in Europe and select Non-European countries*, March 2009.

2. Médecins du Monde, *First European Observatory on Access to Health Care*, 2007.

3. The second report of the European Observatory on access to Health care of Médecins du Monde is available at www.mdm-international.org from September 2009.

4. Directive 2008/11/EC, 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals.

cal and mental health"[5] *and this by "refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal migrants to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy"*[6].

Furthermore, public health concerns are also of the utmost importance in this context: the effectiveness of public health policies depends on the ability of Member States to reduce health inequalities in terms of access to a wide range of health care including prevention for all the population present in the territory. Public health policies are also governed by the question of costs; a rationalization of the cost of health is essential to ensure a sound public health policy. Restricting access to emergency care may lead to an accumulation of health problems which might prove more expensive each time inpatient treatment is required at a later stage. In addition, neglecting access to primary health care for certain categories of the population, in this case the undocumented migrants, and leaving their health to be managed at the level of emergency only, runs counter to a policy intended to be economical and efficient.

In this framework, Members States, have developed their own national systems.

Members States do not uniformly address healthcare needs of asylum seekers and undocumented migrants. Their particular choice is mostly influenced by the health system in place (a national health system or an insurance-based system), their legal systems, migration and asylum history and geographic location within Europe (bordering countries or inner countries).

Thus, most of the time, migration considerations take precedence over humanitarian and Human Rights considerations and sometimes even over public health concerns. This is shown by the fact that Member States have put in place several levels of access to health care and introduced many administrative conditions to enable access to entitlements.

These administrative requirements (e.g. submission of valid identity documents, proof of residence, proof of lack of enough economic resources, spot enquiries, etc.) tend to create new barriers to access health care instead of facilitating it. In addition, a general lack of information and prejudice against migrants prevail in most of the countries.

This report also deals with problems regarding access to health care for asylum seekers. Asylum seekers' rights in Europe are enshrined in European

5. Article 12 (1) of the International Covenant on Economic Social and Cultural Rights, Resolution 2200A (XXI) of 16 December 1966.

6. See *Committee on Economic Social and Cultural Rights, General Comment n° 14 (2000). The right to the highest attainable standards of health*, E/C/2000/4, August 2000, §34. For more details about International Human Rights and the right to health, see www.huma-network.org

7. Directive 2003/9/CE of 27 January 2003 lying down minimum standards for the reception of asylum seekers.

law. The Asylum Seekers' Reception Directive[7] of 2003 formally establishes that they should be entitled as a minimum to emergency care and essential treatment of illnesses. Most targeted countries comply with this obligation, however, in practice, asylum seekers in many countries are facing similar problems to those regarding undocumented migrants. This explains why this is the second targeted group of this report.

THE PURPOSE AND METHODOLOGY OF THIS REPORT

In 2007, the Platform for International Cooperation on Undocumented Migrants (PICUM)[8] issued within the framework of a European project, a documented comparison of eleven countries regarding law and practice and raised the necessity to improve access to health care as an urgent priority in order to guarantee the minimum respect for Human Rights.

Two years later, the present report seeks to provide an updated overview of the different systems regulating access to healthcare for undocumented migrants and asylum seekers in ten Members States (Belgium, France, Germany, Italy, Malta, the Netherlands, Portugal, Spain, Sweden and the UK). In order to underline the specificities of the different groups and the types of care/treatment with the aim of demonstrating the existing discriminations in regards to legal entitlements and administrative conditions, a distinction has been made between: i) nationals, asylum seekers and undocumented migrants; ii) adults and children; and iii) types of care (primary and secondary, emergency, inpatient, ante-post natal) and treatments (medicines, treatment of HIV and treatment of other infectious diseases).
The research also deals with health care entitlements for individuals confined in detention centres and the residence permits or other mechanisms established by national legislations to protect seriously ill undocumented migrants and asylum seekers, who cannot effectively access treatments in their home countries, against expulsion.

Finally, this information is complemented for each country by "testimonies from the field" seeking to provide an overview of the applicability of legal entitlements in daily practice and the main obstacles these populations encounter when seeking health care.

8. PICUM, *Access to Health Care for Undocumented migrants in Europe,* 2007.

The legal information has deliberately been presented as a table with the aim to facilitate comparison among countries regarding particular populations or types of medical care. However wide differences in terminology and health care and legal systems existing between Member States make it necessary to propose a common terminology.

The main source of information used during this study has been the legislation in force in the different countries in the fields of immigration, asylum and health care. This data has been analysed by a legal expert with the support of other law specialists in each country. The members of the HUMA network (former Averroes project) have contributed to this task and have also illustrated the applicability of the legal information with testimonies based on their experience in daily work with undocumented migrants and, to a lesser extent, with asylum seekers. Their work basically consists of direct assistance, referrals to public medical facilities and advocacy activities at local or national level.

The central purpose behind this report is to give visibility to the presence and precariousness of two of the most vulnerable populations in Europe. This is also an important part of the mission of Médecins du Monde and its partners. In this context, the HUMA network mainly seeks to raise awareness among public health officials, health professionals and the general public in order to get the full protection of the asylum seekers and undocumented migrants' right to access health care. This report intends to contribute to that goal and should be considered as a tool at the disposal of policy makers, health professionals and NGOs for advancing undocumented migrants and asylum seekers' entitlements and effective access to health care.

No one should be excluded from health care in Europe.

This report can be considered as a first step. It will be completed with an overview on another for four EU Members States systems in the forthcoming months (Cyprus, Greece, Poland and Romania).

TERMINOLOGY IN THE FRAMEWORK OF THIS REPORT

Migrants	Third country nationals residing (regularly or irregularly) in the EU. EU citizens are excluded from this category.
Nationals	Persons who have the nationality of an EU member state, no matter their country of birth or origin.
Authorised residents	Persons who are entitled to permanently or temporarily stay/reside in an EU country. Different from naturalized people: persons who get the nationality of an EU country. Once they are nationals of an EU member state, they are automatically considered as EU citizens as well.
Asylum seekers (AS)	Persons who are in the procedure of seeking asylum in an EU country (Geneva Convention protection or subsidiary protection). Persons under Dublin regulation are asylum seekers.
Undocumented migrants (UDM)	Third country nationals who are not entitled to stay or reside in an EU country. They do not have a permit or authorisation to stay, live or work in any EU member state. National legislations differ in defining undocumented migrants, but these are the main common administrative situation in which undocumented migrants can be found in a EU country : Who are considered “undocumented migrants”: ■ Persons who are planning to seek asylum but have not formally submitted an application to asylum to the national competent authorities; ■ Rejected asylum seekers (those asylum seekers whose application for asylum failed); ■ Persons whose application for residence permit/authorisation to stay/family reunification is still pending (no decision has been taken by the competent national authorities); in some countries however, they are considered in regular situation. ■ Persons whose application for residence permit/authorisation to stay/family reunification or renewal of this authorisation has failed. ■ Overstayers of visas (tourist, student, medical reasons, …); ■ Overstayers of expired residence or work permits. ■ Persons who did not apply for any visa or residence permit and entered illegally.

	Who are not considered undocumented migrants: ■ Asylum seekers. ■ Holders of a valid residence permit in another EU country. As authorised residents, they have the right to travel for three months in EU countries other than the host EU state. After this period, they can be sent back to their host EU state since they remain in a regular situation there. ■ EU citizens (nationals of any EU member state). It must be noted that undocumented migrants can be free or in detention.
Primary care[9]	The first level contact with people taking action to improve health in a community. Primary Health Care is essential health care made accessible at a cost which the country and community can afford, with methods that are practical, scientifically sound and socially acceptable.
Secondary care[10]	Specialized ambulatory medical services and commonplace hospital care (outpatient and inpatient services). Access is often via referral from primary health care services.
Emergency Care[11]	Medical or other health treatment, services, products or accommodations provided to an injured or ill person for a sudden onset of a medical condition of such nature that failure to render immediate care would reasonably result in deterioration of the injured person's medical condition
Hospitalisation-inpatient care	The act of placing a person in a hospital as a patient.
Free of charge	The costs incurred for providing health care/treatment are fully paid by public funds or statutory/contracted insurance. Patients do not pay anything for the care or treatment received.
Access co-paid	The costs incurred for providing health care/treatment are supported partially by public funds or statutory/contracted insurance and partially by the patients. Patients' contributions can be significant or quite small and symbolic.
No access free of charge	Patients must pay the full cost of the care/treatment received.
Moderating fees, nominal contributions, co-payments or patient charges.	Out-of-pocket payments that patients must make for specific types of care/treatment in National Health Systems. They are usually rather small.

9. World Health Organization, *Health Promotion Glossary*, 1998

10. European Observatory on Health Care Systems, 2000.

11. Segen, J.C., Concise Dictionary of Modern Medicine, 2006.

EXECUTIVE SUMMARY

There are currently a significant number of undocumented migrants living in the EU. This population constitutes one of the most excluded social groups present in our territory. This marginalisation also has an impact in the health field. These migrants often do not access any health care. Not only do they face barriers that are common to the whole migrant population (e.g. lack of awareness and time, language and cultural barriers...) but they also support the consequences of their weak status and invisibility within society. Circumstances such as short entitlements and administrative conditions imposed, their permanent fear of being denounced, their lack of both information and the financial means to pay, make going to the doctor or a hospital the very last resort that they seek and only in the gravest situations.

The situation of asylum seekers regarding health care is also problematic, although in most countries this does not seem to be that critical given their authorised status. Nonetheless, their effective access to health care depends to a great extent on the legal entitlements recognised by the host country, the administrative conditions required and the existence of active policies seeking to improve access by this population to mainstream health facilities.

Another important difference between these two socially excluded groups concerns the EU response. Whilst there is an EU directive establishing the minimum reception standards for asylum seekers, including the minimum health care protection that Member States should guarantee to asylum seekers, there is no EU provision for undocumented migrants' right to health care or to other basic social needs. In the EU, the debate concerning undocumented migrants continues to be rooted in the fight against "illegal migration", and no debate has yet been open about the need to protect undocumented migrants' rights at EU level nor the ratification of the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families. This instrument protects the rights of all migrants, irrespective of their administrative status, and has not been ratified yet by any EU Member State.

The direct consequence of this approach is that nothing prevents Member States from using health care as an instrument to serve migration control purposes rather than considering it as a right that they should protect in accordance with their international Human Rights obligations. Given the fact that each EU Member State has put in place its own system of regulating undocumented migrants' and asylum seekers' access

to health care, the rights and administrative conditions imposed on these populations greatly differ from country to country. Thus, the main purpose of this report has been to provide a very detailed overview of legal entitlements and conditions to access health care in each targeted country for the various groups (nationals, authorised residents, asylum seekers and undocumented migrants) and in regard to the different types of care and treatments (emergency, primary and secondary, ante-post natal, medicines, etc). The report also offers comprehensive information concerning the rules about access to health care inside detention centres and the regulation of the permits to remain for medical reasons that protect seriously ill undocumented migrants against expulsion.

This information is complemented by testimonies from the field about how these legal frameworks are implemented in practice and the obstacles that undocumented migrants and asylum seekers face to effectively access their large or short entitlements. The analysis of this very relevant information shows that these populations face considerable barriers in all EU countries when they try to access health care.

In short, this research provides evidence that the access to health care by undocumented migrants, and to a lesser extent by asylum seekers, is not guaranteed in the EU. The standards set by the main international treaties are far from being respected and member states instead of working on the “progressive realisation” of this right, are increasingly using it as a tool to discourage the entry of new migrants.

This restrictive tendency is occurring throughout Europe and it risks progressively endangering the effectiveness of general public health policies inasmuch as there is a part of the population living in Europe who remains excluded from the mainstream health system.

Based on these results, the HUMA network proposes specific recommendations to the EU institutions seeking to increase the visibility and regulation of the problem at EU level and to urge Member States to improve access to health care so as to avoid any discrimination on the basis of the administrative status.

SITUATION PER COUNTRY

BELGIUM (insurance-based system)

Asylum seekers are entitled to access practically all types of preventive and curative care. In regards to health coverage, there is not a significant discrimination compared to Belgian nationals. The situation is different if we consider the administrative steps to follow to access health care.

Besides emergency care, undocumented migrants can access free of charge the *Aide Médicale Urgente* («urgent medical assistance») entailing a large range of medical services with the only exception of some prosthesis, devices and some categories of medicines. To implement these entitlements, a parallel administrative system has been put in place with a number of complicated steps among which there is a spot investigation by the social services and the agreement of the doctor through a certificate defining the "urgent" character of the care requested. This system is highly bureaucratic and very differently implemented by the authorities in the various catchment areas.

Only a very few number of asylum seekers and undocumented migrants (namely unaccompanied children) can access health care on equal grounds as nationals in regards not only to coverage but also to administrative conditions.

FRANCE (statutory insurance-based system)

Asylum seekers are entitled to access health care on equal grounds as French nationals in regards to coverage and conditions. This also applies to unaccompanied children.

Undocumented migrants can access health care free of charge (with minor exceptions) through a parallel administrative system called "*Aide Médicale État*" (state medical assistance). However, to obtain the *AME* and enjoy these entitlements, they must comply with two conditions: residence in France for more than three months and be under a certain economic threshold. To comply with these conditions, they have to follow a number of administrative steps that end by entailing important obstacles in order to effectively access health care.

The undocumented migrants, who do not comply with these conditions, can access free of charge emergency care, ante/post natal care as well as treatment of HIV and other infectious diseases through the "Permanences d'accès aux soins de santé" (PASS), which are in place only in some hospitals or through the emergency departments.

GERMANY (insurance-based system)

Asylum seekers are significantly discriminated against in the German legislation during their first four years of residence in Germany. During this period, they are only entitled to access free of charge medical treatment in cases of "serious illness or acute pain" as well as "everything necessary

for recovery, improvement or relief of illnesses and their consequences" (including, among others, ante-post natal care and HIV treatment). Only children have rather extended coverage.
The law recognises these same entitlements to undocumented migrants. However, this apparent parallelism between entitlements of asylum seekers residing for less than forty eight months and undocumented migrants is not reflected in daily practice given the obligation to denounce imposed by the German legislation on public administrative institutions, including the social welfare centres that have competences on health administration issues. Only very recently, the new implementing regulation (formally adopted by the German Parliament) has excluded these centres from the duty to denounce in cases where they are asked for reimbursement by health care providers in emergency situations.
This rigid framework has only been "broken" by few initiatives taken at local level intending to provide some health care to undocumented migrants and to this aim procuring their anonymity.

ITALY (national health system)

Asylum seekers are entitled to access health care on equal grounds as Italian nationals in regards to coverage and conditions. This is also the rule for unaccompanied children.
Undocumented migrants have access to wide health coverage (specifically detailed and listed in the law) through a specific system called "*STP* – Temporarily Present Foreigners" consisting of a short-term but renewable anonymous code that is easily provided to all undocumented migrants. Although undocumented migrants are normally requested to pay a symbolic contribution to the system through the "*ticket*", the major barrier is the lack of entitlement to have a family doctor, which also leads to many obstacles accessing specialists.

THE NETHERLANDS (insurance-based system)

Asylum seekers are entitled to access free of charge all types of health care with very few exceptions. In regards to conditions, the system differs from Dutch nationals because asylum seekers cannot choose the insurance company but this difference does not have a major impact on the services received and the conditions applying. Undocumented migrants can only access care considered by doctors on a case by case basis as "medically necessary". The rule is that they will have to pay for it unless it is proven they cannot pay. If this is the case, health care providers, hospitals and pharmacies will provide care or treatment and then ask for reimbursement to the specific public fund.
Although rather generously interpreted by law and particularly in practice (also including HIV treatment and ante-post natal care), this concept does not offer enough guarantees to effectively access health care because it makes access dependent on doctors' discretional appraisals. In addition, many health care providers are not so motivated to provide access since they can only receive maximum the 80% of the cost incurred.

MALTA (national health system)

The treatment that Maltese legislation gives to asylum seekers and undocumented migrants is not very different. This treatment is to a great extent explained by the absence of a legal framework that clearly differentiates the groups of foreigners present in the territory and establishes their basic rights.

There is a law recognizing the right of asylum seekers to access "state medical care and services" (without any more specification). However, no Maltese legal provision refers to undocumented migrants' access to health care. There is only a non-legally binding "policy document" establishing that all foreigners in detention are entitled to "free state medical care and services". Although the interpretation of this term is usually quite large, practice shows that effective access to health care and medicines by these populations highly depend on discretionary decisions made at hospitals or on the scarce medical resources of detention centres and the willingness of their guardians.

In the cases where they are allowed to receive medical services, they access the mainstream system primarily showing their "police number" if they are in detention or their "ID card" if they have been released as a unique identification.

PORTUGAL (national health system)

Asylum seekers are entitled to access health care on equal grounds as Portuguese nationals in regards to coverage and conditions.

Extensive health coverage is provided by law to undocumented migrants as long as they can prove that they have been living in Portugal for more than ninety days. However, the need to provide this evidence often constitutes a critical barrier for them to exercise their entitlements. Access is organized through temporary registrations at health centres and is normally done each time they seek health assistance. For most services, patients must pay a moderating fee, unless they obtain a certificate of lack of resources.

Short-stay undocumented migrants are considered tourists and have reduced coverage that nonetheless includes HIV treatment and ante-post natal care, among others.

SPAIN (national health system)

Asylum seekers and undocumented migrants are entitled to access health care on equal grounds as Spanish nationals in regards to coverage and conditions. The problem is that for undocumented migrants it is more complicated to comply with the administrative requirements, mainly the *empadronamiento* – local civil registration, because it implies having valid identity documentation and an address.

Children and pregnant women are exempted from any administrative requirement. At least four regions in Spain (out of seventeen) have adopted a more friendly approach consisting of providing a "health card" to all

undocumented migrants without any kind of administrative conditions.

SWEDEN (national health system)

In Sweden, asylum seekers and undocumented migrants are highly discriminated against by the legislation governing access to health care. The sole exceptions are children of asylum seekers, asylum seeking children and those children whose parents' application for asylum failed.

Asylum seeking adults are only entitled to access free of charge "care that cannot be postponed", ante-post natal care, family planning and abortion. They have to pay a patient contribution for some of these services.

Undocumented migrants have been totally invisible for the legislation. Only very recently, a law has formally referred to adult rejected asylum seekers only to leave them outside the categories of foreigners who have some access to the health system. Thus, undocumented migrants in Sweden, including children (other than children of rejected asylum seekers), pregnant women or persons in emergency situations or with serious infectious diseases do not have any access to health care free of charge and have great difficulties paying the high costs of the health services. Since there is not a formal prohibition to provide care to undocumented migrants, some county councils and public hospitals have adopted timid initiatives to provide some health care to this extremely marginalized social group.

UNITED KINGDOM (national health system)

Asylum seekers are entitled to access health care on equal grounds as British nationals in regards to coverage and conditions. This is also the rule for unaccompanied children.

Undocumented migrants (adult and accompanied children) can only access free of charge primary care, emergency care, family planning, treatment of communicable diseases (except HIV) and in serious mental health cases. Since 2004, they have had to pay the full cost of any other hospital treatment or diagnosis including secondary care, inpatient care, ante-post natal care provided in hospitals, medicines and HIV treatment. Furthermore, they can be denied access to these services if they cannot advance payment as long as the treatment can wait until the patient returns to his/her country of origin.

An important obstacle for undocumented migrants arises from the fact that general practitioners in the United Kingdom have the discretionary power to include or not include patients in their NHS list and this is the gate to access the meager entitlements that the undocumented migrants have.

EXECUTIVE SUMMARY

Overview tables

Theses tables seek to summarise the results contained in the different country profiles. They show the main features of each system and allow the comparison of them. However the overall complexity of each system can not be presented in this table. For a complete overview of undocumented migrants' and asylum seekers' entitlements as well as residence permits for medical reasons, it is advisable to read the correspondent country profile.

Access to health care and treatment **for adult undocumented migrants**[1] according to applicable national legislation

Colour code

NO ACCESS | ACCESS FULL PAYMENT | ACCESS CO-PAID | ACCESS FREE OF CHARGE | NO LEGAL PROVISION

	ACCESS TO HEALTH CARE					ACCESS TO TREATMENT		
	Primary	Secondary (outpatient)	Hospitalisation (inpatient)	Emergency	Ante-post natal	Medicines	HIV	Other infectious diseases
BELGIUM	If entitled and obtain the *AMU* (thus i) spot investigation of address and lack of resources; and ii) "urgent[2]" character)	If entitled and obtain the *AMU* (thus i) spot investigation of address and lack of resources; and ii) "urgent" character)	If entitled and obtain the *AMU* (thus i) spot investigation of address and lack of resources; and ii) "urgent[3]" character)		If entitled and obtain the *AMU* (thus i) spot investigation of address and lack of resources; and ii) "urgent[4]" character)	If entitled and obtain the *AMU* (thus i) spot investigation of address and lack of resources; and ii) "urgent[5]" character)	If entitled and obtain the *AMU* (thus i) spot investigation of address and lack of resources; and ii) "urgent" character)	If entitled and obtain the *AMU* (thus i) spot investigation of address and lack of resources; and ii) "urgent[6]" character)
FRANCE	If entitled and obtain the *AME* (thus i) proved residence of more than three months; and ii) proved lack of enough resources)	If entitled and obtain the *AME* (thus i) proved residence of more than three months; and ii) proved lack of enough resources)	If entitled and obtain the *AME* (thus i) proved residence of more than three months; and ii) proved lack of enough resources)		If entitled and obtain the *AME* (thus i) proved residence of more than three months; and ii) proved lack of enough resources)[7]	If entitled and obtain the *AME* (thus i) proved residence of more than three months; and ii) proved lack of enough resources)	If entitled and obtain the *AME* (thus i) proved residence of more than three months; and ii) proved lack of enough resources)[8]	If entitled and obtain the *AME* (thus i) proved residence of more than three months; and ii) proved lack of enough resources)[9]
GERMANY	No access due to the existence of the duty to denounce undocumented migrants that completely override entitlements					No access due to the existence of the duty to denounce undocumented migrants that completely override entitlements		
ITALY [10]	However, they are not allowed to have a family doctor					[11]		
MALTA	No legal provision, only a non legally-binding policy document applying to undocumented migrants and asylum seekers in detention centres[12]					No legal provision, only a non legally-binding policy document applying to undocumented migrants and asylum seekers in detention centres		

	ACCESS TO HEALTH CARE					ACCESS TO TREATMENT		
	Primary	Secondary (outpatient)	Hospitalisation (inpatient)	Emergency	Ante-post natal	Medicines	HIV	Other infectious diseases
NETHERLANDS	If "medically necessary" and proved lack of resources to pay	If "medically necessary" and proved lack of resources to pay	If "medically necessary" and proved lack of resources to pay	If "medically necessary" and proved lack of resources to pay	If "medically necessary" (always considered in practice) and proved lack of resources to pay	If "medically necessary" and proved lack of resources to pay	If "medically necessary" (always considered in practice) and proved lack of resources to pay	If "medically necessary" (always considered in practice) and proved lack of resources to pay
PORTUGAL[13]	If proved residence for more than 90 days and proved lack of enough resources	If proved residence for more than 90 days and proved lack of enough resources	If proved residence for more than 90 days and proved lack of enough resources	If proved residence for more than 90 days and proved lack of enough resources		If proved residence for more than 90 days and proved lack of enough resources [14]		
SPAIN [15]	If obtain «*empadronamiento*» and thus the «health card».	If obtain «*empadronamiento*» and thus the «health card».	If obtain «*empadronamiento*» and thus the «health card».			If obtain «*empadronamiento*» and thus the «health card».	If obtain «*empadronamiento*» and thus the «health card».	If obtain «*empadronamiento*» and thus the «health card».
SWEDEN								[16]
UK	If included in a NHS list by a general practitioner				[17]	If included in a NHS list by a general practitioner		If it is one of the 35 specified diseases and if included in a NHS list by a general practitioner[18]

1. There are specificities regarding access to health care in most countries for unaccompanied (migrant) children and children of undocumented migrant.

2. The term "urgent" is interpreted very widely as to cover most of curative and preventive health care.

3. Ibid.

4. Ibid.

5. Ibid.

6. Ibid.

7. Nonetheless, undocumented migrants who do not comply with these conditions can have free-of-charge access through the "Permanences d'accès aux soins de santé" (PASS), which are in place only in some hospitals or through the emergency departments.

8. Ibid.

9. Ibid.

10. The system is organized through an anonymous code flexibly provided to undocumented migrants ("STP code"). Note also that the copayment ("*ticket*") by undocumented migrants is very symbolic in Italy and sometimes they are exempted.

11. Access free of charge or co-paid depending on the category of medicines.

12. According to this policy document, undocumented migrants are entitled to "free state medical care and services".

13. Note also that the copayment (moderating fee) by asylum seekers and nationals is very symbolic in Portugal. Undocumented migrants are usually exempted if they get the certificate of precarious economic situation.

14. Access free of charge or co-paid depending on the category of medicines.

15. This information refers to the situation in the majority of Spanish regions. There are however some of them which have eliminated all administrative conditions to obtain the health card.

16. The general legislation on contagious diseases seems to be applied to everyone through the specialised clinic for sexually transmitted diseases.

17. They can however access some pregnancy care provided by midwives in the community.

18. Some treatment is however provided through designated sexual health clinics upon no conditions.

Access to health care and treatment **for adult asylum seekers**[19] according to applicable national legislation

Colour code

NO ACCESS | ACCESS FULL PAYMENT | ACCESS CO-PAID | ACCESS FREE OF CHARGE | NO LEGAL PROVISION

	ACCESS TO HEALTH CARE					ACCESS TO TREATMENT		
	Primary	Secondary (outpatient)	Hospitalisation (inpatient)	Emergency	Ante-post natal	Medicines	HIV	Other infectious diseases
BELGIUM	If they request first the "*réquisitoire*"[20]	If they request first the "*réquisitoire*"[21]	If they request first the "*réquisitoire*"[22]		If they request first the "*réquisitoire*"[23]	If they request first the "*réquisitoire*"[24]	If they request first the "*réquisitoire*"[25]	If they request first the "*réquisitoire*"[26]
FRANCE [27]								
GERMANY	If residence above 48 months otherwise only if "illness or acute pain" and if get in advance the "*Krankenschein*"	If residence above 48 months otherwise only if "illness or acute pain" and if get in advance the "*Krankenschein*"	If residence above 48 months otherwise only if "illness or acute pain" and if get in advance the "*Krankenschein*"		If residence above 48 months otherwise if they get in advance the "*Krankenschein*"	If residence above 48 months otherwise if they get in advance the "*Krankenschein*[28]	If residence above 48 months otherwise only if "illness or acute pain" and if get in advance the "*Krankenschein*"	If residence above 48 months otherwise only if "illness or acute pain" and if get in advance the "*Krankenschein*"
ITALY						[29]		
MALTA	One legal provision generally entitling them to "state medical care and services" and a non-legally binding policy document applying to asylum seekers and undocumented migrants in detention centres[30]					One legal provision generally entitling them to "state medical care and services" and a non-legally binding policy document applying to asylum seekers and undocumented migrants in detention centres.		
NETHERLANDS								
PORTUGAL						[31]		
SPAIN [32]	If obtain "*empadronamiento*" and thus the health card"	If obtain "*empadronamiento*" and thus the health card"	If obtain "*empadronamiento*" and thus the health card"			If obtain "*empadronamiento*" and thus the health card"	If obtain "*empadronamiento*" and thus the health card"	If obtain "*empadronamiento*" and thus the health card"

	ACCESS TO HEALTH CARE					ACCESS TO TREATMENT		
	Primary	Secondary (outpatient)	Hospitalisation (inpatient)	Emergency	Ante-post natal	Medicines	HIV	Other infectious diseases
SWEDEN	If care "cannot be postponed"	If care "cannot be postponed"	If care "cannot be postponed"	If care "cannot be postponed"		If treatment "cannot be postponed"		If disease included in the list provided by law
UK	If included in a NHS list by a general practitioner.	If included in a NHS list by a general practitioner	If included in a NHS list by a general practitioner			If included in a NHS list by a general practitioner	If included in a NHS list by a general practitioner	If included in a NHS list by a general practitioner

19. There are specificities regarding access to health care in most countries for unaccompanied asylum seeking children and children of asylum seekers.

20. This condition only applies to asylum seekers who choose not to live in public reception centers.

21. Ibid.

22. Ibid.

23. Ibid.

24. Ibid.

25. Ibid.

26. Ibid.

27. They are usually entitled to the "complementary *CMU*" (as long as they are below a certain economic threshold) allowing them to access free of charge all care and treatments.

28. If asylum seekers who have been residing in Germany for less than four years get the *Krakenschein*, they receive the medicines free of charge.

29. Access free of charge or co-paid depending on the category of medicines.

30. According to this policy document, asylum seekers are entitled to "free state medical care and services".

31. Access free of charge or copaid depending on the category of medicines.

32. For asylum seekers, the condition of "*empadronamiento*" does not imply a major barrier.

No expulsion for medical reasons

Code: "X" means that there are legal provisions

	RESIDENCE PERMITS FOR MEDICAL REASONS	OTHER LEGAL MECHANISMS TO AVOID EXPULSION OR REFUSAL-OF-ENTRY FOR MEDICAL REASONS
BELGIUM	X	
FRANCE	X	X
GERMANY	X	X
ITALY	X[33]	
MALTA		X
NETHEDERLANDS	X	X
PORTUGAL	X	
SPAIN	X	X
SWEDEN	X	
UNITED KINGDOM	X	

33. The regulation is however very insufficient and unclear.

BELGIUM

HEALTH SYSTEM

Belgium has a compulsory national health insurance system operated by six private non-profit sickness funds. Social security contributions and subsidies from the federal Government are the main funding sources. Competencies are shared between the federal and the regional governments. There is also private health insurance available, but it makes up a small portion of the health care system.

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

Nationals and authorised residents in Belgium are obliged to become a member of the health insurance fund of their choice. They are entitled to get insured based on their current or past professional activity, their student status in a recognised school for higher education or as beneficiaries' dependants. They pay a membership contribution rate and a certain fixed amount of the cost of the service (taking income into account)[1]; these sums are established by law. The insurance fund pays or reimburses the remaining amount. There is free choice of physician and hospital by the patient. Secondary care is provided even if not previously authorised by the general practitioner[2].

The content of the "compulsory health insurance" *(AMI – Assurance Maladie-Invalidité)* is publicly determined in the fee schedule *("INAMI nomenclature")*, which lists more than 8000 services that are reimbursable. For further health coverage not included in this package, patients have the ability to take out additional packages. The premium of this extra package is freely established by the funds.

Those persons having a precarious economic situation can ask the social welfare centre *(CPAS/OCMW)* to cover the insurance membership fee, the cost of the service that they have to co-pay or specific health services not included in the "compulsory health insurance" (namely optical needs, dental care, and some medications)[3].

1. Most services are reimbursed at a rate of 75%. However, this rate is higher for some categories of persons with low incomes.

2. Observatory on Health Systems and Policies, *Health Systems in Transition – Belgium,* 2007.

3. They can get the "omnio status" or the "BIM status" ("*bénéficiaire de l'intervention majorée*").

Only **asylum seekers** who are studying in a recognised school for higher education and their dependants can get the compulsory health insurance. Except this very specific case, they can access free of charge all health care that is considered "necessary for everyday life" *("relevant de la vie quotidienne")* or included in the "INAMI Nomenclature" with the exception of care that is "manifestly unnecessary" *("manifestement non nécessaire")*. The system covers practically all types of preventive and curative care, excluding only orthodontics, fertilisation treatments, some dental extractions and dentures, and esthetic treatments.

The procedure differs depending on whether or not they are staying in the public reception centre[4] where they registered after arrival. If they live in one of these centres, the centre will directly pay the medical expenses[5]. Otherwise, it corresponds with the Federal Agency for the Reception of Asylum Seekers *(FEDASIL)* or to the competent social welfare centre *(CPAS/OCMW)* to reimburse the health care providers for the expenses incurred for providing health assistance to them and to provide the patient – in cases other than emergency – with a payment warranty *(réquisitoire)* before he/she visits the doctor[6].

Undocumented migrants can only get the compulsory health insurance in very limited situations: i) children who are unaccompanied; ii) if their parents, children or spouses are entitled to health insurance; iii) if they had health insurance but lost their legal status; iv) if they had a stay permit and a declared job (paying all social contributions), but at a certain moment lost their legal status, while the employer continued paying the contributions (they will keep the insurance for several more years); and v) if they are studying at a recognised school for higher education[7].

Undocumented migrants who do not fall under these categories only have the right to receive "urgent medical assistance" *(Aide Médicale Urgente - AMU)* free of charge. There is not a clear-cut definition of this concept. Belgian legislation only states that: i) medical assistance can be preventive and curative and provided by mobile units or in a health centre; and ii) the "urgent" character must be certified by a doctor[8]. The concept of "urgent medical assistance" has often been confused with "emergency care", however, the former is much broader than the latter, and it includes a large range of medical services with the only exception of some prosthesis, devices, and some categories of medications.

4. Centre d'accueil or ILA (*Initiative locale d'accueil).*

5. The following health services are free of charge even if not included in the "*INAME Nomenclature*" for being "necessary for everyday life": a rage of medicines, dental extractions, dentures necessary for re-establishing mastication, glasses for children and some adults, and infant milk. On the contrary, the following health services are not free of charge even if included in "INAME Nomenclature" for being "manifestly unnecessary": Orthodontics, fertilisation treatments, some dental extractions and dentures and esthetic treatments. In addition to these provisions, *Fedasyl* could also authorise other types of care for human dignity reasons. See Article 24 of the *Loi sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers of 12 January 2007; See Arrêté royal déterminant l'aide et les soins médicaux manifestement non nécessaires qui ne sont pas assurés au bénéficiaire de l'accueil et l'aide et les soins médicaux relevant de la vie quotidienne qui sont assurés au bénéficiaire de l'accueil* of 7 May 2007 (implementing Article 24 of the Act on reception of asylum seekers) ; See also *Circulaire de Fedasil* of 10 May 2007.

6. The *CPAS/OCMW* of their area of residence or of the area where emergency care has been provided.

7. PICUM, *Access to health care for undocumented migrants*, p. 20.

8. See *Loi organique des Centres Publics d'Action Sociale* of 8 July 1976 and *Arrêté Royal relative à l'Aide Médicale Urgente* of 12 December 1996.

The social welfare centres *(CPAS/OCMW)* are the administrations managing and monitoring the entire process. The administrative procedure is extremely complex and varies significantly depending on the *CPAS/OCMW*. According to the most common system, undocumented migrants must first go to the *CPAS/OCMW* of their residence area. After a spot inquiry (about their residence and economic situation), the *CPAS/OCMW* will make a decision as to whether or not to consent to pay for needed medical care. If they agree to do it, undocumented migrants then must visit an approved doctor who will send an "urgent medical assistance certificate" and the bill to the *CPAS/OCMW* after treating the patient[9].

Emergency care however, (care required immediately in case of an accident or a sudden illness) is always provided to everyone, including undocumented migrants, without any prior administrative requirement or payment[10].

Prior to 1984, the law did not contain separate regulations for access to health care for documented and undocumented migrants. Between 1984 and 1992, undocumented migrants were granted medical and material support for subsistence. Since 1992, public support for undocumented migrants was reduced to that of a medical nature[11].

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the health insurance fund in case of accident, a sudden disorder or a sudden complication of an illness[12].

Conditions:

- To have the "compulsory health insurance" (thus, membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the service. Exception: people with a precarious situation can ask the *CPAS/OCMW* to pay for these expenses.

ASYLUM SEEKERS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: access is free of charge in case of an accident, a sudden disorder or a sudden complication of an illness.

9. PICUM, *Access to health care for undocumented migrants*, p. 20-21.

10. See *Loi relative à l'Aide Médicale Urgente* of 8 July 1964.

11. See Article 57 of *the Loi organique* of 8 July 1976; See Article 57(2) as amended by the *Loi portant des dispositions sociales et diverses* of 30 December 1992.

12. See *Loi relative à l'aide médicale urgente* of 8 July 1964.

Conditions:

Three different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance but registered and living in a public reception centre: no particular conditions required.
- If not entitled to insurance and not living in a public reception centre: no particular conditions required. It is not necessary to request the payment warranty ("requisitoire", issued by the competent authority) before going to hospital (free choice of hospital).

UNDOCUMENTED MIGRANTS

Entitlements:

If entitled to insurance: same as nationals.

Access free of charge in case of accident, a sudden disorder or a sudden complication of an illness.

Conditions:

No particular conditions required in order to access the emergency system, however, the procedure to get the AMU will be started at the hospital by the health care provider who will send the "urgent medical assistance certificate" to the competent *CPAS/OCMW*[13].

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the health insurance fund.

Conditions:

- To have the "compulsory health insurance" and show the "health insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the service. Exception: people with a precarious situation can ask the *CPAS/OCMW* to pay for these expenses.

ASYLUM SEEKERS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.

If not entitled to insurance: access free of charge.

Conditions:

Three different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance but registered and living in a public reception centre:

13. PICUM, *Access to health care for undocumented migrants*, p. 22.

- ➤ Health care is provided outside the centre (and paid by the centre) only if it is not possible to receive care inside the centre. If the patient chooses to seek outside care, he/she will have to pay.
- If not entitled to insurance and not living in a public reception centre:
  - ➤ They must request the payment warranty ("*requisitoire*", issued by the competent authority) prior to visiting the doctor. Free choice of doctor.

UNDOCUMENTED MIGRANTS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: access free of charge.

Conditions:

Two different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance *(AMU system)*:
  - ➤ Obtain the agreement of the social welfare centre (after a spot inquiry to prove that they live in the residence area and have a precarious economic situation); and
  - ➤ Visit a doctor and obtain the "urgent medical assistance certificate" (some *CPAS/OCMW* only allow visits to some approved doctors).

HOSPITALISATION (INPATIENT CARE)

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the health insurance fund.

Conditions:

- ➤ To have the "compulsory health insurance" and show the "health insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the service. Exception: people with a precarious situation can ask the *CPAS/OCMW* to pay for these expenses.

ASYLUM SEEKERS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: access free of charge.

Conditions:

Three different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance but registered and living in a public reception centre: no particular conditions required.

- If not entitled to insurance and not living in a public reception centre:
  - ➤ To request the payment warranty ("requisitoire", issued by the competent authority) before being hospitalised. Free choice of hospital.

UNDOCUMENTED MIGRANTS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: access free of charge.

Conditions:

Two different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance:
  - ➤ Get the agreement of the social welfare centre (after a spot inquiry to prove that they live in the residence area and have a precarious economic situation); and
  - ➤ Go to a hospital and obtain the "urgent medical assistance certificate" (some *CPAS/OCMW* only allows visits to some agreed hospitals, normally public hospitals[14]).

ANTE AND POST NATAL CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the health insurance fund.
Access to preventive care (ante and post natal) free of charge through the *ONE - Office de la Naissance et de l'Enfance* (Birth and Childhood Office).

Conditions:

- Mainstream system
  - ➤ To have the "compulsory health insurance" and show the "health insurance card" (thus, membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the service. Exception: people with a precarious situation can ask the *CPAS/OCMW* to pay for these expenses.
- Access through *ONE*: no particular conditions required.

ASYLUM SEEKERS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: access free of charge.
Access to preventive care (ante and post natal) free of charge through the *ONE - Office de la Naissance et de l'Enfance* (Birth and Childhood Office).

14. Ibid.

Conditions:

Four different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance but registered and living in a public reception centre:
  - ➤ Health care is provided outside the centre only if it is not possible inside the centre.
- If not entitled to insurance and not living in a public reception centre:
  - ➤ To request the payment warranty (issued by the competent authority) before visiting the doctor.
- Access through *ONE:* no particular conditions required.

UNDOCUMENTED MIGRANTS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.

If not entitled to insurance: access free of charge.

Access to preventive care (ante and post natal) is free of charge through the *ONE - Office de la Naissance et de l'Enfance* (Birth and Childhood Office).

Conditions:

Three different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance *(AMU system)*:
  - ➤ Get the agreement of the social welfare centre (prior spot inquiry to prove that they live in the residence area and have a precarious economic situation); and
  - ➤ Visit a doctor and obtain the "urgent medical assistance certificate" (some *CPAS/OCMW* only allow visits to some approved doctors). The *CPAS/OCMW* usually sends the patients to the *ONE.*
- Access through *ONE:* no particular conditions required.

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the health insurance fund[15].

Conditions:

- ➤ To have the "compulsory health insurance" and show the "health insu-

15. About 2500 pharmaceutical products are on a positive list and therefore are partially or fully reimbursable. Patients' contribution depends on the pharmaceutical category that reflects the social importance of the pharmaceutical, pharmaco-therapeutic criteria and price criteria. There are six categories: A, B, B grande modèle, B-ATC, B grande modèle et ATC, C, C-ATC, Cs et Cx. See European Observatory on Health Systems and Policies, *Health Systems in Transition – Belgium*, 2007, pp. 114-115 and www.inami.fgov.be.

rance card" (thus membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the pharmaceuticals. There are some drugs provided with no co-payment (category A: serious and long-term illnesses). Exception: people with a precarious situation can ask the *CPAS/OCMW* to pay for these expenses.

ASYLUM SEEKERS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: access free of charge.

Conditions:

Three different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance but registered and living in a public reception centre: no particular conditions required. Medicines are normally provided in the centres.
- If not entitled to insurance and not living in a public reception centre:
  - ➤ To request the payment warranty ("requisitoire", issued by the competent authority) before going to the pharmacy (free choice of pharmacy).

UNDOCUMENTED MIGRANTS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: access is free of charge.

Conditions:

Two different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance *(AMU system)*:
  - ➤ Obtain the agreement of the social welfare centre (after a spot inquiry to prove that they live in the residence area and have a precarious economic situation); and
  - ➤ Visit a doctor and obtain the "urgent medical assistance certificate". The *CPAS/OCMW* can decide to work only with specific pharmacies.

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Screening is co-paid by the patient and the health insurance fund and is not anonymous.
Screening is free of charge and anonymous ONLY in specific centres.

Conditions:

Two different situations:

- In hospitals:
  - ➤ To have the "compulsory health insurance" and show the "health insurance card" (thus, membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the service. Exception: people with a precarious situation can ask the *CPAS/OCMW* to pay for these expenses.
- In specific centres[16]: no particular conditions are required.

ASYLUM SEEKERS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.

If not entitled to insurance: screening is free of charge and anonymous ONLY in specific centres. Screening can be also done in public reception centres.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.

If not entitled to insurance: screening is free of charge and anonymous ONLY in specific centres; otherwise it will be done through the AMU system.

Conditions:

Two different situations:

- In hospitals:

If entitled to insurance: same as nationals.

If not entitled *(AMU system)*:

- ➤ Get the agreement of the social welfare centre (after a spot inquiry to proof that they live in the residence area and have a precarious economic situation); and
- ➤ Visit a doctor and obtain the "urgent medical assistance certificate".

- In specific centres: same as nationals.

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access is co-paid by the patient and his/her health insurance fund.

Conditions:

- ➤ To have the "compulsory health insurance" and show the "health insurance fund" (thus membership in a health insurance fund) and to pay the

16. There are centres in Brussels, ("ELISA centre"), Antwerp ("Helpcentre"), Liège, Namur and Charleroi.

membership contribution rate and a certain amount of the cost of the service. Exception: people with a precarious situation can ask the *CPAS/OCMW* to pay for these expenses.

ASYLUM SEEKERS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: access is free of charge.

Conditions:

Three different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance but registered and living in a public reception centre: no particular conditions required.
- If not entitled to insurance and not living in a public reception centre:
  - ➤ To request the payment warranty (issued by the competent authority) before going to hospital.

UNDOCUMENTED MIGRANTS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: Access is free of charge.

Conditions:

Two different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance *(AMU system)*:
  - ➤ Obtain the agreement of the social welfare centre (after a spot inquiry to proof that they live in the residence area and have a precarious economic situation); and
  - ➤ Go to a hospital and obtain the "urgent medical assistance certificate" (some *CPAS/OCMW* only allow visit to some agreed hospitals).

TREATMENT OF OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access is co-paid by the patient and the health insurance fund.

Conditions:

- ➤ To have the "compulsory health insurance" and show the "health insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the service. Exception: people with a precarious situation can ask the *CPAS/OCMW* to pay for these expenses.

ASYLUM SEEKERS

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: access free of charge.

Conditions:

Three different situations:

- If entitled to insurance: same as nationals
- If not entitled to insurance but registered and living in a public reception centre: no particular conditions required.
- If not entitled to insurance and not living in a public reception centre:
  - ➤ To request the payment warranty (*"requisitoire"* issued by the competent authority) before visiting the doctor.

UNDOCUMENTED MIGRANTS

Entitlements:

If entitled to insurance (very rare): same as nationals.
If not entitled to insurance: Access is free of charge.

Conditions:

Two different situations:

- If entitled to insurance: same as nationals.
- If not entitled to insurance *(AMU system)*:
  - ➤ Obtain the agreement of the social welfare centre (after a spot inquiry to prove that they live in the residence area and have a precarious economic situation); and
  - ➤ Visit a doctor and obtain the "urgent medical assistance certificate" (some *CPAS/OCMW* only allow visits to some agreed doctors).

CHILDREN

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access to health care is free of charge for children below 18 years. Compulsory insurance is paid by public funds.
Access to preventive health care (including vaccination) is free of charge for children up to six years of age through the *ONE*. Some vaccinations are compulsory[17].

Conditions:

- General system:

17. For the list of compulsory vaccinations, see www.one.be/banque/vac.htm.

- ➤ To have the "compulsory health insurance" and show the "health insu rance card" (thus membership in a health insurance fund). There is no need to pay the membership contribution rate and a certain amount of the cost of the service.
- *ONE:* no particular conditions required.

ASYLUM SEEKERS' CHILDREN

Entitlements:

If entitled to insurance (very rare occasions): same as nationals.
If not entitled to insurance: access free of charge.

Conditions:

Four different situations:

- If entitled to insurance: same as nationals
- If not entitled to insurance but registered and living in a public reception centre:
  - ➤ Health care is provided outside the centre only if it is not possible inside the centre. If the patient chooses to seek care outside the centre, he/she will have to pay.
- If not entitled to insurance and not living in a public reception centre:
  - ➤ They have to request the payment warranty ("requisitoire" issued by the competent authority) before visiting the doctor.
- *ONE*: same as nationals.

UNACCOMPANIED ASYLUM SEEKING CHILDREN

Entitlements:

Same as nationals (they are insurable).

Conditions:

- ➤ To have the compulsory health insurance and show the health insurance card (no need to pay the membership contribution rate and a certain amount of the cost of the service). To get the compulsory health insurance, they must:
  - Prove that they are unaccompanied[18].
  - Prove that they have attended school during a specific period (three consecutive months).
  - If they are exempted from the obligation to attend school: prove that they have been presented to a "preventive family support institution recognised by the authorities"[19].

CHILDREN OF UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge.
Access to preventive health care (including vaccination) free of charge for children up to six years through the *ONE*.

18. *According to Art. 5 of the Loi-programme (I) relatif à la tutelle des mineurs étrangers non accompagnés of* 24 December 2002.

19. "Institution de soutien préventif aux familles agréées": Office de la Naissance et de l'Enfance (O.N.E.), Dienst für Kind und Familie (D.K.F.), Kind en Gezin (K&G) or a "établissement d'enseignement maternel". See *Loi portant dispositions diverses en matière de santé* of 13 December 2006; *Arrêté royal modifiant l'arrêté royal du 3 juillet 1996 portant exécution de la loi relative à l'assurance obligatoire, soins de santé et indemnités, coordonnée le 14 juillet 1994* of 3 August 2007; *Circulaire OA nº 2008/198 of 9 May 2008 ; Art. 5 of the Loi-programme (I) relatif à la tutelle des mineurs étrangers non accompagnés* of 24 December 2002.

Conditions:

- If entitled to insurance (very rare): same as nationals.
- If not entitled to insurance *(AMU system)*:
  - ➤ Obtain the agreement of the social welfare centre (after a spot inquiry to prove that they live in the residence area and have a precarious economic situation); and
  - ➤ Visit a doctor and obtain the "urgent medical assistance certificate" (some *CPAS/OCMW* only allow visit to some agreed doctors).

UNACCOMPANIED (MIGRANT) CHILDREN

Entitlements:

Same as nationals (they are insurable)[20].

Conditions[21]:

- ➤ To have the compulsory health insurance and show the "health insurance card" (no need to pay the membership contribution rate and a certain amount of the cost of the service). To get the compulsory health insurance, they have:
  - To prove that they are unaccompanied;
  - To prove that they have attended school during a specific period (three consecutive months).
  - If they are exempted from the obligation to attend school: to prove that they have been presented to a "preventive family support institution recognised by the authorities".

DETENTION CENTRES

ADULTS

Access free of charge to health care and medicines "that the person needs" provided outside the centre only if the services are not available inside the centre.

Daily medical survey in case of isolation.

The doctor of the centre can recommend to the director of the centre to suspend detention for physical or mental health reasons.

Detainees can request a health care provider other than one of the doctors of the centre. In this case, the patient will pay the expenses[22].

CHILDREN

Accompanied undocumented children can be confined with their parents in detention centres (same access to health care as adults).

Unaccompanied children below 18 years old cannot be confined in detention centres. They are sent to a specialised centre for observation and orientation where they can get health insurance.

20. Ibid.

21. See *Loi* of 13 December 2006 and annexes to *Circulaire* of 9 May 2008.

22. Arts. 53-61 of *Arrêté royal fixant le régime el les mesures de fonctionnement, applicables aux lieux situés sur le territoire belge, gérés par l'Office des étrangers, où un étranger est détenu, mis à la disposition du gouvernement ou maintenu, en application des dispositions citées à l'article 74/8 § 1er, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, notamment l'article 130* of 2 August 2002.

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status: Undocumented migrants' personal information contained in the "urgent medical assistance certificate" (*AMU*) cannot be used by the social welfare centres for purposes other than reimbursement to health care providers treating undocumented migrants[23].

NON EXPULSION FOR MEDICAL REASONS

RESIDENCE PERMIT FOR MEDICAL REASONS

WHO ?

All asylum seekers and undocumented migrants who are seriously ill.

CONDITIONS:

- The illness must entail a real risk for the patient's life or physical integrity or a real risk of inhuman or degrading treatment.
- Adequate treatment must not exist in his/her country of origin or residence. If the treatment is available but not accessible, it will be deemed as not being adequate[24].
- The application (through a letter sent by registered mail) must be submitted to the "Foreigners Office" *(Office des Étrangers)* together with:
  - Copy of the passport/ID document or the proof about the impossibility to provide these documents. Although an ID document is required for residence permit on medical grounds, asylum seekers are exempted and undocumented migrants can be exempted if they can validly prove that they cannot obtain an ID document in Belgium.
  - Medical certificate issued by a specialised doctor and addressed to the medical authority in charge (*médecin-conseil* of the "Foreigners Office") stating the existence of the risk as provided by the law and unavailability of the treatment in the country of origin/residence. On the basis of this certificate, the competent medical authority (*médecin-conseil* of the "Foreigners Office") issues an opinion about the existence of the risk and the possibility to be treated in the country of origin/residence. Before giving the final opinion, this doctor can request a check-up of the patient and a complementary opinion from other specialised doctors.

23. Art. 4 of *Arrêté royal relatif à aide médicale urgente octroyée par les centres publics d'aide sociale aux étrangers qui séjournent illégalement dans le Royaume* of 12 December 1996.

24. See Preparatory work of the Proposal for a Law amending the *loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Rapport fait au nom de la Commission de l'Intérieur, des affaires générales et de la fonction publique* of 4 July 2006, Doc 51 2478/008 of the Chambre des Représentants de Belgique.

- Other useful information about the illness.
- Address in Belgium.

DURATION:

The stay permit has a validity of at least one year as long as the situation provided by law remains. After five years, this authorisation to stay becomes permanent[25].

ACCESS TO HEALTH CARE:

If they are granted this residence permit, they can get the "compulsory health insurance" and have access to health care on same grounds as nationals.

SHORT TERM EXTENSION OF LESS THAN THREE MONTHS OF TEMPORARY RESIDENCE PERMITS OR VISAS[26]

WHO ?

Overstayers of temporary permits to stay (including asylum seekers) or visas.

CONDITIONS:

➤ Only in exceptional circumstances, including short-term illness or pregnancy.

➤ The application must be submitted to the office "short stay" of the Foreigners Office (bureau «court séjour» de l'Office des Etrangers) together with:

- Copy of passport
- Copy of visa (if applicable).
- Copy of residence permit in other Schengen country (if applicable).
- Copy of the return plane ticket (if it exists).
- Medical certificate issued by a specialised doctor (according to official template).
- Proof that the health care expenses have been paid.
- Proof of health insurance or means to pay for medical expenses.

DURATION:

Three months maximum.

ACCESS TO HEALTH CARE:

No possibility to get the "compulsory health insurance". Access varies depending on prior status.

25. See Art. 8 of the *Arrêté royal fixant des modalités d'exécution de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* of 17 May 2007; Art. 13(1) of the *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* of 15 December 1980.

26. *Circulaire OE/03/CTL/04 de l'Office des étrangers aux CPAS* of 24 January 2004.

IN PRACTICE

THE VISION OF MDM BELGIUM REGARDING THE SITUATION IN PRACTICE

Access to health care for asylum seekers - adults:

Since last year, Fedasil (the federal agency responsible for receiving asylum seekers) has been unable to accommodate the numbers of asylum seekers and their families entitled to material aid in a federal accommodation centre.

To cope with the numbers, Fedasil has had to recurrently refer asylum seekers to the homeless assistance network, which is already beyond capacity. The missions of Médecins du Monde Belgium have therefore been faced with a growing number of asylum seekers who have recently arrived in the country and who have not fully benefited from material aid or from the social, medical and psychological supervision that Fedasil is expected to offer them. These asylum seekers are also unaware of their rights (with regard to both healthcare and asylum procedures, etc.). We regularly observe the same lack of awareness about the healthcare rights of patients who have been covered by, but have since left, the assistance system. These patients, although no longer accommodated at the centre, have the benefit of free medical care until the completion of their asylum procedures. At the request of these patients, the medical department of Fedasil issues cost allowance forms («réquisitoire»), which ensures that healthcare providers are paid for the services they provide.

New arrivals, who have generally not yet had the opportunity to develop the skills necessary for navigating their way around the maze of Belgian bureaucracy, are often unaware of this procedure.
Another problem is the lack of awareness among healthcare providers of the cost coverage offered by Fedasil.
Although patients are free to choose their own healthcare provider, the providers themselves are reluctant to accept the patients because of the bureaucratic intricacies and the time it takes to receive payment from Fedasil. Some providers only accept the patients on the condition that they arrive with a ready-completed cost mandate. This mandate system therefore requires an intermediary service (e.g. the *CASO*, which stands for 'accommodation, care and guidance centres') to liaise with the medical department of Fedasil. Although the creation of this centralised intermediary has improved the administration of cost coverage procedures (e.g. cost mandates can now be obtained within half an hour, via fax), too many barriers to healthcare access still exist.

Access to health care for undocumented migrants - adults:

Although the legal framework of the emergency medical assistance (*AMU*) system seems clear enough, the enforcement of procedures are more complicated in practice. Several factors continue to obstruct access to care, including: unfamiliarity with procedural complexities, different policies from one public centre for social welfare centre (*CPAS*) to another, waiting lists that are long and vary greatly in length from one place to another, and conditions which are often over-stringent.

First of all, the lack of awareness of *AMU* system is widespread, both on the part of healthcare providers and patients. The word 'emergency' causes confusion as well, for it suggests that preventive healthcare is not included and help should only be sought in situations requiring true 'emergency' medical intervention. The patients, meanwhile, are unaware of their right to care, and are fearful that seeking assistance from a *CPAS* might have negative consequences in terms of expulsion, denouncements, etc. They are also reluctant to provide an address, for they fear repercussions for the people offering them shelter (a fear often shared by the hosts themselves).

Once the *CPAS* stage has been successfully negotiated, other obstacles arise. Most people without residence permits have little knowledge of the French or Flemish languages, and the *CPAS* rarely have enough money to hire a translator. In Brussels, explanatory brochures in the language of the country of origin are available in just one of the 19 *CPAS* operating in the city.

This lack of awareness is exacerbated by the fact that every *CPAS*, which operates under municipal jurisdiction, is free to follow its own policy with regard to the *AMU*, and to stipulate different administrative procedures. This causes considerable problems in the Brussels region (where 19 CPAS are concentrated in a small but densely-populated territory) and in Antwerp (where the specific character of the political context seems to influence the decisions of the only *CPAS* on whether to award *AMU* or not). Every *CPAS* has its own medical certificate to be completed by doctors, and applies other criteria for deciding whether a given applicant has the right to *AMU*. Some *CPAS* issue a medical card, while others refuse to do so and act on an ad hoc basis. The duration of the aid they provide varies; and the rules also vary with regard to the choice of the provider (open, or subject to an agreement with the *CPAS*), as do procedures for access to medication, specialists, etc.

For their rights to become operative, most *CPAS* require that applicants submit an *AMU* certificate before they release the cost allowance form.

At the same time, most health care providers require that patients first present the cost allowance form. Thus, they find themselves caught in a vicious cycle which cannot be broken without one of the two parties reneging on its 'policy'.
Waiting times for *AMU* are variable, and they are too long in situations which require rapid intervention. Therefore the *CASO (centre d'accueil de soin et d'orientation)* of Médecins du Monde are often obliged to provide care pending a reply from the *CPAS.* The latter are beginning to impose stricter conditions, such as proof of identity. According to these *CPAS*, this is a necessary precondition for reimbursement in a framework of stricter federal control. Numerous problems arise in regard to people with no fixed abode (one day they stay at one friend's house, the next at another's, and so on), given that each *CPAS* is responsible only for the homeless in its own local jurisdiction.

In matters of real emergency, patients are supposed to report to the emergency unit of a hospital. If the patient is not eligible for medical aid via his *CPAS*, the hospital social services normally invoke the aid sector rule: and this makes the *CPAS* responsible, instead of the hospital. However, due to a lack of awareness on the part of those seeking care and to dysfunction at hospital level, some patients leave the emergency unit with an enormous bill to pay. It regularly occurs that different *CPAS*-point to each other about who has to pay a certain bill. In Antwerp, a patient without *AMU* has to place a deposit of €100 to qualify for access to emergency services.

Another problem relates to people who are awaiting the issue of residence permits and who are squatting or even who have gone on hunger strike. This often leads to their requests for *AMU* being refused. The social services department of the *CASO* of Brussels has occasionally reported instances of a *CPAS* refusing to officially process[27] applications from squatters or hunger strikers.

The same general rules apply for ante and neo-natal care (coverage of costs by *CPAS*). ONE / *'Kind & Gezin'* structures often have their own social services which offer patients guidance in gaining access to care. In instances where the *CPAS* refuses to cover the costs of people without documents, the stance adopted by *ONE* or 'Kind & Gezin' can vary from one place to another (costs covered by own funds or not) and only for lower-cost services such as ultrasound scans, lab analyses, gynaecological checks, and so on. When a woman without emergency medical coverage gives birth after seeking assistance from its emergency unit, a hospital will typically invoice all parties in order to increase its chances of receiving payment. It is not unusual for patients to receive astronomical bills (from 5,000 to 7,000 euros).

27. «Officially processing» means the *CPAS* issues a document attesting that the person effectively came to request some kind of aid – and the *CPAS* is legally obliged to issue this document.
But if the application is not officially processed, there is no official refusal by the *CPAS* to help the person, and so no appeal against the 'refusal' can be lodged with the employment tribunal.

In regards to HIV tests and checkups for HIV-positive patients, various local initiatives (such as free and anonymous HIV testing) are available, especially in Brussels, Namur, Liège, Antwerp, and other cities in Belgium. It is difficult for us to evaluate the extent to which these initiatives are known, but they are available. The reference centres have their own social services which offer patients guidance on gaining access to care. Pending access, the reference centres often help out at their own expense.

Also in Belgium, there are several free screening and monitoring centres for persons with tuberculosis.

Access to health care in detention centres:

General practitioners operate in these centres, and when necessary, specialist consultations are arranged.

As employees of the minister for the interior, general practitioners working from these centres cannot always exercise their profession with the required independence. Medical imperatives do not necessarily take priority over others. For instance, people entering these centres receive no medical examination upon their arrival. Therefore, people whose continuing detention seriously compromises their mental or physical health remain in detention nevertheless, and those who could be released on medical grounds will be expelled.

Moreover, the doctors working in detention centres do not, as a rule, approve applications for the issue of residence permits on medical grounds, even where the person in question meets the required conditions for filing such an application (i.e. they suffer from an illness which “represents a real risk to their life or physical integrity or a real risk of inhuman or degrading treatment where there is no adequate treatment in their country of origin or the country in which they are residing”, no treatment in the country of origin, proof of identity). The presence of NGOs, namely medical NGOs, in detention centres is therefore necessary.

Non-expulsion for medical reasons:

Many doctors are unaware of this procedure, or simply sign certificates indicating which care their patients need. In addition, this procedure is excessively time-consuming (in theory the *Foreigners Office* should notify the municipality within 10 days that a residence check be made) before applications are declared admissible and applicants receive provisional residence permits.

Médecins du Monde - Belgium

FRANCE

HEALTH SYSTEM

France has a national (statutory) health insurance system financed by contributions and taxes. This system is supplemented by complementary voluntary health insurance. Within the statutory health insurance system, there is a general scheme and other special schemes for certain categories of workers and self-employed individuals.

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

Nationals and verified authorised residents in France are covered by the statutory health insurance system comprised of a basic health package (*régime de base*). For this health care package, they pay an income-related contribution and have the right to access an extensive range of medical services which include primary care, secondary care, dental care, medication, diagnosis tests, inpatient and outpatient care, medical transport, dental and optical prosthesis and rehabilitation, with the sole exception of glasses, some dental prosthesis, hearing aids, and other medical devices[1]. The patients are obliged to pay the full cost of the service received at the point of delivery (except for inpatient care) and they are then reimbursed (about 70%) by the local health administration (*Caisse Primaire d'Assurance Maladie*). Patients can negotiate with the health professional to put in place the "third party pay system" for which the patient does not pay 100% of the cost upfront. On the contrary, the *Caisse Primaire* reimburses part of the expenses to the health professional. The patient pays the moderating fee ("*ticket modérateur*") for the remaining portion of the cost. There are several cases where patients do not pay any *copayments*: certain hospitalisation and long-term diseases, pregnancy care for the last four months and care for newborn babies, certain invalidity pensioners, and sufferers of work accidents[2].

In addition, for care not included under the statutory health insurance system, they must pay a nominal contribution, unless they take out supplementary insurance. The coverage of supplementary insurance and the amount the patient must pay varies depending on the package agreed with the insurer[3].

1. See Article L321-1 *of the Code de la Sécurité Sociale.*

2. Articles L322-2 and R322-1 of the *Code de la Sécurité Sociale.*

3 This insurance can be taken out from mutual insurance providers, basic health insurance funds (*organismes de prévoyance*) and private insurance companies. These insurance providers are in free competition.

4. This system does not cover tourists or other individuals staying in France for less than three months. People without a fixed address must be registered in one of the agreed associations.

5. Dependants' family members also benefit from the statutory health insurance on this criteria. See Articles L313-3 and L161-14 of the *Code de la Sécurité Sociale.*

This system applies to nationals and foreigners with verified legal residence in France longer than three months[4] and who are employed[5], otherwise, they will be covered by the *Couverture Maladie Universelle – CMU* on the basis of the residence criteria[6]. To have the *CMU*, they only pay contributions if their yearly income is above 8774 € for 2009.
In addition, people with very low income (up to 621€ per month for one-person household for 2009) can benefit from the "*complementary CMU*" (*Couverture Maladie Universelle complémentaire*) allowing them to access free of charge (paid by public funds) all medical services beyond the basic package of the régime de base and includes glasses, dental prosthesis, hearing aids and other medical devices[7] without the obligation to pay contributions, moderating fees, or advance payment at the point of delivery. Health service providers request reimbursement to the competent health authority, the *Caisses Primaires d'Assurance Maladie*. The "*complementary CMU*" has a validity of one year with a possibility to renew it. People slightly above the threshold for the "*complementary CMU*", can receive public subsidies to (partially) pay for supplementary insurance.

Asylum seekers[8] are entitled to the basic health package of the statutory health insurance system as well as to the *complementary CMU* in case they are below the abovementioned economic threshold (which is typically the case). This is the only requirement to comply with to obtain the complementary *CMU*. They do not need to prove three-months of residence in France[9].

Prior to 1993[10], undocumented migrants were treated on equal grounds as nationals with scarce economic resources. Today, health care for **undocumented migrants** is organised through a parallel administrative system called "State Medical Assistance" (Aide Médicale État-*AME*) allowing them to access free of charge (paid with public funds and without payment in advanced) all types of health services with the sole exception of optical products, hearing aids and some dental prosthesis[11]. The *AME* only entitles undocumented migrants who can prove that they have been residing in France for more than three months and are below a certain economic threshold (621€ per month for one-person household for 2009).

To obtain the *AME*, which is granted for one year and must be renewed, undocumented migrants must comply with a number of requirements that involve important administrative barriers: 1) proof of identity of the applicants and dependants (passport, national ID card, birth certificate, family record book, expired residence permits, and any other document of such nature in order to testify the identity)[12]; 2) evidence of an address and uninterrupted residence in France for three months (visa or border stamp otherwise, copy of the lease or rent receipt, tax notices, hotel bills,

6. See Article R380-1 of the *Code de la Sécurité Sociale.*

7. See Article L861-3 of the *Code de la Sécurité Sociale.*

8. Only those asylum seekers who formally applied for asylum.

9. Article R280-1 of the *Code de la Sécurité Sociale*.

10. See Article 36 of *the Loi nº 93-1027 relative à la maîtrise de l'immigration et aux conditions d'entrée et de séjour des étrangers en France,* of 24 August 1993. This law (called «Loi Pasqua») linked the affiliation to social security to the right to stay legally. In 1999, the *Loi nº99-641 portant la création d'une Couverture Maladie Universelle of 27 July 1999* left undocumented migrants aside the *CMU* and linked them to the *AME* system.

11. See Article L251-2 of *the Code de l'action sociale et des familles.* Like nationals, undocumented migrants can receive a small amount of reimbursement for the cost of some dental prosthesis.

12. See Article 4(1) of the *Décret nº 2005-860 relative aux modalités d'admission des demandes d'aide médicale de l'Etat* of 28 July 2005 and Article 2(2) of the *Circulaire DGAS/DSS/DHOS/2005/407 relative à l'aide médicale de l'Etat* of 27 September 2005.

electricity-gas-water-telephone bills, documents or certificates issued by social or health administrations or entities and any other document of such a nature to prove this condition with the exception of sworn declarations by the applicants of third parties outside the cases formally provided by the norms[13]; and 3) evidence in the last 12 months they have remained under a certain economic threshold on the basis of resources of any nature (621€/month for one-person household for 2009)[14]. There are two different procedures to obtain the *AME*: the normal procedure (that may take a long time) and a "priority" procedure formally requested by a doctor on grounds of urgency and possible consequences of health status. Undocumented migrants do not obtain the standard card called "*carte vitale*", but they receive a notification paper instead.

Undocumented migrants who can prove that they have been living in France for at least three years are also eligible for "home medical assistance" (assistance médicale à domicile), allowing them to receive primary care free of charge[15].

Not all undocumented migrants living in France are eligible for *AME*[16]. If they do not succeed in proving a residence longer than three months or the lack of economic resources, they are only entitled to: i) "emergency care" (*soins d'urgence*) understood as care during life-threatening situations, treatment of contagious diseases (necessary to eliminate a risk for public health), all types of health for children, maternity care and abortion for medical reasons (the treatment of chronic diseases is excluded)[17]; ii) screening of sexually transmitted diseases and HIV/AIDS, family planning, vaccinations; and iii) screening and treatment of tuberculosis. Emergency care for these migrants is provided directly in the emergency departments of hospitals, or it is organised through the offices that are theoretically present in all public hospitals, the "*Permanences d'accès aux soins de santé" (PASS)*[18]. The fund "*fonds de soins d'urgence*" reimburses hospitals for the expenses incurred on a case by case basis.

Finally, there are several categories of undocumented migrants who are entitled to the health package of the statutory health insurance system and the complementary *CMU*: sufferers of work accidents and occupational diseases, undocumented prisoners, overstayers of residence permits in France (during one year)[19], and unaccompanied children.

There was an attempt by the French Parliament in 2002 to reduce the *AME* coverage from 100% to 75%, which made undocumented migrants contribute to the cost of inpatient and outpatient care. It can still be considered an "attempt" because this reform was subordinated to the adoption of a decree implementing this measure and setting up the amounts, however this regulation has not yet been adopted.[20]

13. See Article 4(2) of the Décret nº 2005-860 and the *Circulaire DGAS/DSS/DHOS/2005/407*.

14. This threshold varies according to the number of people in the household. For further details about the evaluation of this requirement see Article 3(4) of the *Décret nº 2005-860* and Comède, *Guide pratique 2008 - Prise en charge medico-psycho-sociale des migrants/étrangers en situation précaire*, 2008.

15. See Article 38-I(4) of the *Loi Pasqua* and Article L111-2 of the *Code de l'action sociale et des familles* in PICUM, *Access to health care for undocumented migrants*, p. 28.

16. There is however the possibility to be granted the AME even if not complying with these requirements for extreme urgent situations, but it depends on a discretionary decision made by the public authorities. This possibility is called "State medical assistance by minister decision" and is generally known as "humanitarian medical assistance". See *Guide Comede 2008*, p. 222.

17. See Articles L254-1 and L254-2 of the *Code de l'action sociale et des familles, and the Circulaire DHOS/DSS/DGAS nº 141 du 16 mars 2005 relative à la prise en charge des soins urgents délivrés à des étrangers résidant en France de manière irrégulière et non bénéficiaires de l'Aide médicale de l'Etat*.

18. This service seeks to treat all persons with no health coverage in France.

19. See Article L161-8 of the *Code de la Sécurité Sociale*.

20. See *Loi de finances rectificative pour 2002* of 30 December 2002. See also PICUM, *Access to health care for undocumented migrants*, p. 28.

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the statutory health insurance.

Conditions:

➤ To have the basic health package of the "statutory health insurance" and show the "*carte vitale*". Thus, pay the contributions and a certain amount of the cost of the service (20% of the cost as well as 12-16€ as "daily hospital fixed rate" ("*forfait journalier hospitalier*"). Exception: among others, beneficiaries of the complementary *CMU*, hospitalisation for more than thirty consecutive days or by reason of long-term diseases, pregnancy care for the last four months and care for newborn babies, certain invalidity pensioners and sufferers of work accidents.

ASYLUM SEEKERS

Entitlements:

Access free of charge.

Conditions:

➤ To obtain the complementary *CMU*: to prove they are below a certain economic threshold and show the "*carte vitale*" to prove eligibility.

UNDOCUMENTED MIGRANTS

Entitlements:

If they prove residence over three months: access is free of charge.

If they cannot prove residence over three months: access is free of charge through the *Permanences d'accès aux soins de santé – PASS*.

Conditions:

Two different situations:

- If they prove residence over three months (*AME system*):
  - ➤ To obtain the *AME* and show the *AME* notification paper:
    - Prove identity;
    - Prove continuous residence in France for more than three months; and
    - Prove they are below a certain economic threshold.
- If they do not prove residence over three months (*Permanences d'accès aux soins de santé*): no particular conditions required.

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the statutory health insurance.

Conditions:

➤ To have the basic health package of the "statutory health insurance" (thus pay the contributions) and a certain amount of the cost of the service (30%-40% of the cost, depending on the medical speciality). To show the "*carte vitale*"[21]. Exception: beneficiaries of the complementary *CMU*, pregnancy care for the last four months and care for newborn babies, individuals with certain long-term diseases, certain invalidity pensioners and sufferers of work accidents.

ASYLUM SEEKERS

Entitlements:

Access free of charge.

Conditions:

➤ To obtain the complementary *CMU*: to prove they are below a certain economic threshold and to show the "*carte vitale*" to prove eligibility.

UNDOCUMENTED MIGRANTS

Entitlements:

If they prove residence over three months: access free of charge.
If they cannot prove residence over three months: NO access free of charge (payment of full cost).

Conditions:

■ If they prove residence over three months (*AME system*):

➤ To obtain the *AME* and show the *AME* notification paper:

- Prove identity and
- Prove continuous residence in France for more than three months; and
- Prove they are below a certain economic threshold.

HOSPITALISATION (INPATIENT CARE)

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the statutory health insurance.

Conditions:

➤ To have the basic health package of the "statutory health insurance" and show the "*carte vitale*". Thus, pay the contributions and a certain amount of the cost of the service (20% of the cost as well as 12-16€ as "daily hospital fixed rate" ("*forfait journalier hospitalier*"). Exception: among others, beneficiaries of the complementary *CMU*, hospitalisation for more than thirty consecutive days or by reason of long-term diseases, pregnancy care for the last four months and care for newborn babies, certain invalidity pensioners and sufferers of work accidents.

21. Electronic card to facilitate paperwork with the health administration: identification, proof of entitlements and co-payments.

ASYLUM SEEKERS

Entitlements:

Access free of charge.

Conditions:

➤ To obtain the complementary *CMU:* to prove they are below a certain economic threshold and show the "*carte vitale*" to prove eligibility.

UNDOCUMENTED MIGRANTS

Entitlements:

If they prove residence over three months: access free of charge.
If they cannot prove residence over three months: NO access free of charge (payment of full cost).

Conditions:

■ If they prove residence over three months (*AME system*):

➤ To obtain the *AME* and show the *AME* notification paper:

- Prove identity;
- Prove continuous residence in France for more than three months; and
- Prove they are below a certain economic threshold.

ANTE AND POST NATAL CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge paid with public funds (last four months of pregnancy and care for newborn babies). Beyond this period, care is co-paid.

Conditions:

➤ To have the basic health package of the "statutory health insurance" and show the "*carte vitale*". Thus pay the contributions. Exception: beneficiaries of the complementary *CMU*.

ASYLUM SEEKERS

Entitlements:

Access free of charge.

Conditions:

➤ To obtain the complementary *CMU*: to prove they are below a certain economic threshold and show the "*carte vitale*" to prove eligibility.

UNDOCUMENTED MIGRANTS

Entitlements:

If they prove residence over three months: access free of charge.
If they cannot prove residence over three months: access is free of charge through the *Permanences d'accès aux soins de santé – PASS.*

Conditions:

Two different situations:

- If they prove residence over three months (*AME system*):
  - ➤ To obtain the *AME* and show the *AME* notification paper:
    - Prove identity;
    - Prove continuous residence in France for more than three months; and
    - Prove they are below a certain economic threshold.
- If they do not prove residence over three months (*Permanences d'accès aux soins de santé*): no particular conditions required.

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the statutory health insurance.

Conditions:

➤ To have the basic health package of the "statutory health insurance" and show the "*carte vitale*" in order not to advance payment or be reimbursed. Thus pay the contributions and a certain amount of the cost of the drugs (from 0, 35% or 65% depending on the category of drugs). Exception: beneficiaries of the complementary *CMU*, certain hospitalisation and long-term diseases, pregnancy care for the last four months and care for newborn babies, certain invalidity pensioners and sufferers of work accidents.

ASYLUM SEEKERS

Entitlements:

Access free of charge.

Conditions:

➤ To obtain the complementary *CMU*: to prove they are below a certain economic threshold and show the "*carte vitale*" to prove eligibility.

UNDOCUMENTED MIGRANTS

Entitlements:

If they prove residence over three months: access free of charge.

If they cannot prove residence over three months: NO access free of charge (payment of full cost).

Conditions:

- If they prove residence over three months (*AME system*):
  - ➤ To obtain the *AME* and show the *AME* notification paper:
    - Prove identity;
    - Prove continuous residence in France for more than three months; and
    - Prove they are below a certain economic threshold.

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Screening is anonymous and free of charge.

Conditions:

No particular conditions required. There are specific public centres[22].

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

- ➤ To have the basic health package of the "statutory health insurance" and show the "*carte vitale*" (thus pay the contributions). Full exemption of copayment.

ASYLUM SEEKERS

Entitlements:

Access free of charge.

22. *CDAG (Centres de dépistage anonyme et gratuit) et CDO (Consultations dépistage et orientations)* for individuals without health coverage.

Conditions:

➤ To obtain the complementary *CMU*: to prove they are below a certain economic threshold and show the "*carte vitale*".

UNDOCUMENTED MIGRANTS

Entitlements:

If they prove residence over three months: access free of charge.
If they cannot prove residence over three months: access free of charge.

Conditions:

Two different situations:

- If they prove residence over three months (*AME system*):
  - ➤ To obtain the *AME* and show the *AME* notification paper:
    - Prove identity;
    - Prove continuous residence in France for more than three months; and
    - Prove they are below a certain economic threshold.
- If they do not prove residence over three months (*Permanences d'accès aux soins de santé*): no particular conditions required.

TREATMENT OF OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Screening: anonymous and free of charge in specialised public centres[23].
Treatment: Access co-paid by the patient and the statutory health insurance. Access to treatment free of charge in specialised centres (*CLAT – Centres de lutte antituberculose)*.

Conditions:

- For screening: No particular conditions required.
- For treatment:
  - ➤ To have the basic health package of the "statutory health insurance" and show the "*carte vitale*". Thus pay the contributions (no copayment required).
    If not health coverage: no conditions required to access treatment through the *CLAT*.

ASYLUM SEEKERS

Entitlements:

Screening: same as nationals.
Treatment: Access free of charge.

Conditions:

- For screening: same as nationals
- For treatment: To obtain the complementary *CMU:* to prove they are below a certain economic threshold and show the "*carte vitale*".

23. *CDAG*, for hepatitis ; *CIDDIST (Centre d'information, de dépistage et de diagnostic des infections sexuellement transmisibles)* for sexually transmitted diseases ; *CDO and CLAT (Centres de lutte antituberculose)* for tuberculosis.

UNDOCUMENTED MIGRANTS

Entitlements:

Screening: same as nationals.

Treatment: If they prove residence over three months: access free of charge. If they cannot prove residence over three months: access free of charge in specialised centres (*CLAT – Centres de lutte antituberculose*).

Conditions:

- For screening: same as nationals
- For treatment:

If they prove residence over three months:

➤ To obtain the *AME* and show the *AME* notification paper:

- Prove identity;
- Prove continuous residence in France for more than three months; and
- Prove they are below a certain economic threshold

If they do not prove residence over three months (Centres de *lutte antituberculose*): no particular conditions required.

CHILDREN

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the statutory health insurance or fully paid by the statutory health insurance (depending on parents' health coverage)
Vaccinations: There are compulsory vaccinations free of charge[24].

Conditions:

➤ To have the basic health package of the "statutory health insurance" through their parents and show the "*carte vitale*". (Thus pay a certain amount of the cost of the service). Exception: beneficiaries of the complementary *CMU*, certain hospitalisation and long-term diseases.

ASYLUM SEEKERS' CHILDREN

Entitlements:

Access free of charge.

Conditions:

➤ To obtain the complementary *CMU*: prove that their parents are below a certain economic threshold and show the "*carte vitale*" to prove eligibility.

24. For the list of vaccinations, see www.invs.sante.fr/BEH/2009/16_17/beh_16_17_2009.pdf

UNACCOMPANIED (ASYLUM SEEKING) CHILDREN

Entitlements:
Access free of charge.

Conditions:
- To have designated a legal representative[25].
- To obtain the complementary *CMU*: to prove they are below a certain economic threshold and show the "*carte vitale*" to prove eligibility.

UNACCOMPANIED (MIGRANT) CHILDREN

Entitlements:
Access free of charge.

Conditions:
- To have designated a legal representative.
- To obtain the complementary *CMU*: to prove they are below a certain economic threshold and show the "*carte vitale*" to prove eligibility.

CHILDREN OF UNDOCUMENTED MIGRANTS[26]

Entitlements:
Access free of charge.

Conditions:
- To obtain the *AME* and show the *AME* notification paper:
  - Prove identity[27].

25. This legal representative is normally the public service *"Aide Sociale à l'enfance – ASE"*.

26. Unaccompanied children are not considered "undocumented" in France and are recognised specific status and rights.

27. Children of undocumented migrants thave the right to *AME* immediately. They do not have to wait for their parents to proof their residence and lack of enough economic resources.

28. See Article L 551-2 of the Code de l'entrée, du séjour des étrangers et du droit de asile (Ceseda) of 22 February 2005; Article 12 of the Décret nº 2005-617 relatif à la rétention administrative et aux zones d'attentes pris en application des articles L 111-9, L 551-2, L 553-6 et 821-5 de Code de l'entrée et du séjour des étrangers et du droit d'asile of 30 May 2005; Annex II of Arrêté précisant les conditions d'application des articles 2, 6 et 8 du Décret nº 2001-236 of 19 March 2001 relatif aux centers et locaux de rétention administrative of 24 April 2001 and Annex II of Arrêté précisant les conditions d'application des articles 55, 59 et 61 du décret nº 2001-635 du 17 juillet 2001 pris pour l'application de l'ordonnance nº 2000-373 du 26 avril 2000 relative aux conditions d'entrée et de séjour des étrangers à Mayotte of 19 January 2004.

DETENTION CENTRES

ADULTS

Access to health care free of charge inside the centre by agreed doctors and nurses and outside in case of necessity[28].

CHILDREN

They should not be confined in detention centres unless the principle of «family unity» is applied by the authorities. If confined, same as adults.

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status:
A Circular of February 2006[29] by the Ministries of Interior and Justice called on the security forces to cordon off all health care facilities, waiting rooms in associations, housing facilities for students and workers, specific neighbourhoods and mobile units run by social services agencies, or NGOs with the aim of stopping and questioning undocumented residents. It also gave instructions and examples on how to lure undocumented migrants into reporting to the *Prefecture* in order to make their arrest easier. Nonetheless, the *Cour de Cassation* declared illegal these instructions.

NON EXPULSION FOR MEDICAL REASONS

NO RESORT TO EXPULSION SANCTIONS OR SUSPENSION OF REFUSAL TO ENTRY OR EXPULSION ORDERS:

Undocumented migrants who habitually reside in France and who need healthcare to the extent that the lack of treatment could bring exceptionally serious consequences to their health condition cannot be sent outside the border or expelled as long as they cannot effectively access (availability and accessibility) to the appropriate treatment in the country of return[30].

CONDITIONS:

- The decision is taken by the prefect (*Préfet*) after the opinion of the medical-inspector on public health of the department where the applicants are (normally in a detention centre). If the expulsion order is finally repealed, the applicant is released and must apply for a "temporary residence permit for medical reasons" (*see below*).

ACCESS TO HEALTH CARE:

- Access to health care through the *AME* system as long as they are not granted the "temporary residence permit for medical reasons".

29. *Circulaire of 21 February 2006 nº NOR JUSD0630020C* of the Ministry of the Interior and Ministry of Justice.

30. See Articles L511-4 10º and L521-3 5º of the *Ceseda*.

RESIDENCE PERMIT FOR MEDICAL REASONS: "TEMPORARY RESIDENCE PERMIT FOR MEDICAL REASONS"[31]

WHO ?

Seriously ill undocumented migrants or asylum seekers[32].

CONDITIONS:

- The applicant's presence in France must not constitute a risk for public order[33].
- The applicant must be living in France.
- Healthcare must be needed to the extent that the lack of treatment could bring exceptionally serious consequences to health status (there is not a list of illnesses).
- As long as they cannot effectively access (availability and accessibility)[34] to appropriate treatment in the country of origin.
- The applications must be submitted in person (or by mail if authorised) to the competent authority, the chief of police (*Préfet*) along with:
  - ID document (they are exempted from having a passport, at least as provided by law);
  - photographs;
  - proof of length of stay in France of more than one year[35]; and
  - medical certificate issued by an "agreed doctor" or a "hospital doctor". In practice they are also asked to provide a registered address (*domiciliation*) and fill out an application form[36].
- The *Préfet* will make the decision after the non-binding opinion of the competent medical authority[37] (examining: i) the necessity of health care; ii) the risk of serious health consequences in case of lack of treatment; iii) accessibility of appropriate treatment in country of origin; and iv) whether the estimated length of needed treatment). The medical authority can also demand the medical examination of the applicant by a regional medical commission[38].
- The applicant has to pay the "*droits de chancellerie*" if they enter France without a visa[39].

DURATION:

Depending on the length of treatment as estimated by the competent medical authority with a maximum of one year[40]. Possibility of renewal (no need of a new medical certificate in case of long-term treatments)[41].

ACCESS TO HEALTH CARE:

They get the *CMU* or the complementary *CMU* as long as they comply with the two conditions (length of residence and lack of sufficient resources).

31. It is one of the possibilities to obtain the "Temporary residence private and family life card", see Article L313-11 11° of the *Ceseda* and Articles R313-20 to R313-32 of the *Ceseda* (implementing regulation part).

32. Although the application for this permit is not incompatible with the application for asylum in some cases, in practice, there are refusals. See *Guide Comède 2008*, p. 115.

33. In principle, it would be the case for foreigners who committed a very serious criminal offence; however, there is an increasing tendency to include many persons release from prison. See *Guide Comède 2008*, p. 103.

34. See *Circulaire d'application de la loi n° 98-349 du 11 mai 1998 relative à l'entrée et au séjour des étrangers en France et au droit d'asile (NOR/INT/D/98/00108C)* of 12 May 1998.

35. Applications of residence below this length will be only exceptionally considered. See *Circulaire d'application de la loi n° 98-349 (NOR/INT/D/98/00108C)*.

36. See *Guide Comède 2008*, p. 98.

37. A public health inspector medical doctor of the departmental health and social directorate or, in Paris, the chief of the medical service of the police headquarters.

38. See *Arrêté relatif aux conditions d'établissement des avis médicaux* of 8 July 1999.

39. *See Guide Comède 2008*, p. 107.

40. See Article L313-1 *Ceseda*.

41. See *Circulaire d'application de la loi n° 98-349 (NOR/INT/D/98/00108C)*.

STAY PERMIT FOR MEDICAL REASONS: "PROVISIONAL AUTHORISATION FOR MEDICAL TREATMENT"[42]

WHO ?

Seriously ill undocumented migrants who have recently arrived in France or cannot prove that they have been residing in France for one year.

CONDITIONS:

All conditions required for a "temporary residence permit for medical reasons" except the length of residence in France of one year.

DURATION:

Six months maximum. In practice, it could be renewed once to make it possible for the applicant to apply for the "temporary residence permit for medical reasons".

ACCESS TO HEALTH CARE:

They obtain the *CMU* or the complementary *CMU* as long as they comply with the two conditions (length of residence and lack of sufficient resources).

42. "Autorisation provisoire de séjour pour soins" (APS) established in Articles R313-22 of the *Ceseda* (implementing regulation). See also *Circulaire d'application de la loi nº 98-349 (NOR/INT/D/98/00108C)*.

IN PRACTICE

THE VISION OF MDM FRANCE REGARDING THE SITUATION IN PRACTICE

Access to healthcare for undocumented migrants (adults):

From 2000, the *AME* (*Aide Médicale Etat* – state medical support), restricted to those residing irregularly in the country, created a duplicate system for some 150 000 people. This system has led to discrimination, mistrust and additional complications, creating numerous obstacles to accessing rights and healthcare.

These obstacles are linked to increasingly narrow interpretations of the law and to a lack of knowledge of the law on the part of public services and benefits agencies who frequently made mistakes in law (ignorance of the *AME* system, improper demands for documentary proof, etc.), an injustice multiplied tenfold in French overseas territories of Guiana and Mayotte. A lack of knowledge on the part of health professionals and the particular requirements of the *AME* system have led to those entitled regularly being denied healthcare, much more often than is the case for those benefiting from the *CMU complémentaire*[43] scheme.

Moreover, many people have been excluded from the system due to the threshold established to be considered as not having "enough economic resources" (the ceiling is set very low, even below the poverty line), and treatment covered is limited to ophthalmic and dental care. People's ignorance of these very complex arrangements, the language barrier coupled with a glaring lack of interpretation services, and long delays involved in obtaining this illness cover have also led to delays in care being offered and failures to take up treatment. Among patients seen by *Médecins du Monde* in France, only 11 % of foreign nationals covered under the *AME* system are able to access their rights on demand[44].

Lastly, the centres known as *PASS (permanences d'accès aux soins de santé* – twenty-four hour healthcare clinics) often do not fulfil their remit; an *Médecins du Monde's* survey of 36 *PASS* revealed that half of them do not accept individuals without health coverage when it is part of their remit to do so.

Access to health care for asylum seekers (adults):

Conditions for accessing healthcare for many asylum seekers have deteriorated over the past few years. Problems with accessing treatment of-

43. Almost 4 out of 10 doctors (37%) refused to treat those entitled to benefit from the *AME* system, according to a 2006 survey by Médecins du Monde, and 10% in the case of *CMU complementaire* claimants.

44. Médecins du Monde, *Rapport 2007 de l'Observatoire de l'accès aux soins de la mission France de Médecins du Monde,* October 2008.

ten have to do with accessing rights, coupled with the complexity of the system and a lack of knowledge of the law and procedures on the part of healthcare and welfare system professionals. Difficulties arise out of nationality and immigration status checks that agencies are legally obliged to carry out, ignorance on the part of agencies regarding prefectural procedures for refugees (increased number of weak residence permits), and specific rights of asylum seekers. These issues often cause a refusal to accord rights or a mis-allocation of *AME* support. In most instances, obstacles to accessing healthcare arise from management failures in the benefits system, principally involving mistakes in law made by centres.

Only 17% of asylum seekers seen by *Médecins du Monde*, who should benefit from social security and *CMU complementaire*, can fully access their rights on demand (doubtless delayed through requirements for documentary proof).

Access to healthcare for undocumented migrants and asylum seekers (children)

Among those consulting the *Médecins du Monde* healthcare centres in France in 2007[45]:

- 9.5% of patients seen in 2007 were minors, a percentage that had remained fairly steady since 2001;
- Many of these minors were very young: 45% under 7 years of age, 26% between 7 and 12 years of age, and 29% aged between 13 and 17 years of age; the majority (87%) lived with their parents or family members, whether or not they were in accommodation;
- As it was the case for patients as a whole, 90% of minors came from abroad with, most of the young people seen coming from the EU – 31 % were Romanian;
- 27% of minors seen were not housed, with almost half of them under 7 years of age;
- 90% of minors seen had no healthcare cover;
- 2581 medical consultations held involved minors (1.5 consultations per minor compared to 2 for other patients). One minor out of two was seen for an infectious disease, in most cases respiratory, with 20% requiring treatment over the medium or long term.

The majority of minors seen did have health insurance cover with approximately one quarter covered under the *AME* system. But close examination of the minors who could effectively access health insurance, or *AME* reveals that more than 86% of them did not benefit from any health coverage, placing them at an even greater disadvantage than adult patients, 80% of whom could not freely access their rights.

45. See Médecins du Monde, *Rapport 2007 de l'Observatoire de l'accès aux soins de la mission France de Médecins du Monde.*

Undocumented children from abroad should benefit from access to the *AME* system from the moment they arrive in France. Children should be identified in their own name as being entitled to *AME* services from the day an application is filed[46]. Overall, whatever their immigration status, only 10% of minors benefit from medical coverage when consulting MdM healthcare services for the first time.

An analysis of obstacles to accessing rights encountered by patients who were children reveals no noticeable difference from other patients worthy of mentioning. All obstacles were the same as those encountered by their parents: need for residency status, complexity of procedures to follow, lack of knowledge of rights and administrative structures, financial difficulties, improper demands for documentary proof, and discrimination.

Non-expulsion for medical reasons[47]

For several years and on many occasions, the granting of residence permits to receive medical treatment has been under attack in France. The number of refusals to renew this type of leave to remain has continued to rise and enforcing this right has become increasingly difficult. Foreign nationals are confronted with numerous failures on the part of government prefectural offices: deplorable reception services, demands for documentation not required by law, imposition of improper charges, breaches of medical confidentiality and extremely lengthy delays in application processing. The number of obstacles to effectively get a residence permit as provided for by law is on the increase. In addition to these administrative failures, some *Préfets* (government officials) openly defy decisions by the public health service inspectors who submit medical opinions on *DASEM (Droit au séjour pour raisons médicales)* applications. “Country profile sheets”, intended to inform public health medical inspectors about countries of origin, were uploaded to the intranet systems of the Ministries of Health and the Interior despite being an unreliable tool for gauging the medical care offered and access to it in applicants’ countries of origin. The pressure exerted by the *Préfets*, who are obliged to meet targets for the numbers of illegal residents deported, results in all those involved in processing and deciding on applications doing so in an increasingly cursory manner.

What can be seen today is a steep rise in refusals to renew residence permits on medical grounds to those whose health has far from recovered and even a rise in the detention and deportation of the sick. Deportation attempts are increasing and also affect those who are HIV-positive, despite such individuals being protected by two specific government circulars. Only total vigilance and repeated interventions by associations ensure public services and ministry staff uphold the law.

46. Point 69 of Cpam medical insurance regulations dated 15th November 2006.

47. See Observatoire du droit à la santé des étrangers, *La régularisation pour raisons médicales en France. Un bilan de santé alarmant*, May 2008. The ODSE monitors the health of foreign residents and is a collective organisation of several associations, of which MdM is an active member.

Lastly, insecurity arising from uncertainty about resident status represents one more barrier to effectively accessing healthcare.

Access to health care in detention centres[48]:

Health in detention

Arrests have multiplied to the point of becoming indiscriminate: particularly vulnerable foreigners, who until recently had been left at liberty, are now finding themselves placed in detention. The race to meet targets driven by the Ministry of Interior in 2003 and, subsequently, by today's Ministry for Immigration, Integration, National Identity and the Solidarity Development has led to detention centres overflowing with detainees.

The crowding together of those who are "fit" and those who are "ailing" has intensified the atmosphere of malaise. The lengthening of the detention period from 12 to 32 days has considerably heightened the sense of injustice and incomprehension detainees experience in the face of what is happening to them and has increased the incidence of stressful situations. This has also had a direct impact on the general health of the people detained.

While appearing before a judge ruling on release or detention, individuals learn that they will be further deprived of their liberty for an initial period of two weeks, a pronouncement that has an immediate impact on their psychological state, which has already suffered the ordeal of pre-hearing detention. This legal extension to the maximum detention period predictably results in foreign nationals on average spending a considerably longer period of time in detention. This lengthening of the time spent locked up compounds the anxiety and stress. It is therefore not uncommon to see normally calm people suffering genuine outbursts of anger, others being unable to sleep and having to take sleeping tablets, and a number of others self harming and attempting suicide. The conditions imposed by the surroundings become considerably more stressful.

Every detention centre allows access to medical services and detainees do therefore have access to treatment. Problems are particularly acute in case where detainees suffer from serious illnesses that cannot be treated in their countries of origin and where this lack of available care could have particularly serious consequences.

In 2008 and 2009, detention centres saw individuals passing through their doors who were taking multiple medications, had suicidal tendencies, were in a precarious psychological state, or suffering from extremely serious medical conditions. Public health doctors in Marseille, responsible for healthcare in the immigration detention centre of Le Canet, reported a rise in the attempted suicide rate in that centre: in 2007, 37 acts of self harm – hanging, lacerating, swallowing of objects such as fork, razor blades, screws, etc. – were recorded among the 3132 foreign nationals held[49].

48. Section drawn by *Cimade*, an organisation intervening in detention centres in France, www.cimade.org

49. *La Provence*, 10th October 2008.

Although some ill people are released from these centres, it should be noted that a good number of them are returned to their countries of origin despite there being no assurances that they will receive adequate medical treatment there.

Protecting the sick from deportation

A foreign national placed in a detention centre for removal may invoke his state of health to benefit from the provisions of article L 521 – 3 5 of the Code governing the entry and leave to remain of foreign nationals and rights of asylum, or alternatively, invoke the impossibility on medical grounds of taking the means of deportation transport offered, in particular, a plane. This is an exercising of a foreign national's right and is in no way the granting of a favour.

Healthcare provision has existed in all immigration detention centres since 1999, following agreement between public hospital doctors and nursing staff and the prefecture, and yet not everyone is aware of the role of the healthcare staff in protecting the sick from being deported from France. Doctors are the only people able to refer cases to the *Ddass* medical inspector for an opinion as to whether the health of a detained foreign national could withstand deportation from France. This opinion is conveyed to the prefecture which has decided on detention and which makes the final decision on whether or not to deport. The medical staff is not addressed in the legislation. The way the legal provision of care works varies considerably from place to place, depending on the personal interests of those involved. In immigration detention centres, foreign nationals do not often have a medical interlocutor, except in cases perceived as emergencies by police officials.

Lastly, while methods of recourse are being implemented, prefectures, and even the ministry, still proceed with the deportation of sick foreign nationals, contrary to the advice given by public health medical inspectors and placing the race to meet targets above ethical imperatives. It is the case, therefore, that a foreign national was deported to Guinea at the beginning of 2009 when the *Ddass* medical inspector had recommended that he be retained on French territory for an unlimited period due to the gravity of his illness. This advice was not heeded by the prefecture and when the matter was referred to the ministry it did not intervene to block deportation.

Médecins du Monde - France
Cimade (on detention centers)

GERMANY

HEALTH SYSTEM

Germany has a predominantly income-based contribution obligatory health insurance system that it is also partly financed by other statutory insurance schemes (e.g. civil servants), taxes, out-of-pocket payments and private health insurance[1]. In addition to the Statutory Health Insurance System, there are private health insurances fully covering specific groups of the population and offering supplementary and complementary insurance for Statutory Health Insurance-insured people. Decision-making powers are shared between the *Länder*, the federal government, and legitimized civil society organizations.

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

Since 1 January 2009, all **nationals and authorised residents** are obliged to have either public or private health insurance. Most of the people are insured by the Statutory Health Insurance System since membership is mandatory for employed individuals if the gross monthly salary is below 4013 EUR (for 2008). People above this threshold, self employed persons, free lancers, and to some extent civil servants can opt to be fully insured by private health insurance companies that are obliged to offer a basic rate package whose service terms and extent are comparable to those of statutory health insurance. Individuals with very low income can become recipients of social benefits and have the contributions and charges linked to the Statutory Health Insurance paid by the social welfare centres.

The Statutory Health Insurance Systems' benefits include (for the beneficiaries and their dependents) all measures which could be described as evidence based medicine: prevention, screening and treatment of disease (emergency, ambulatory medical care with registered doctors, inpatient/hospital care, partial reimbursement of drugs, dental care, medical devices, home nursing care, certain areas of rehabilitative care, sociotherapy), patient transport in certain health conditions, and certain other benefits such as patient information. Those seeking to upgrade their medical coverage (consult doctors who only have contracts with private insurances, homeopathic remedies, private rooms in hospitals, dental implants or vision products for adults) must take out supplemental private insurance.

1. See European Observatory of Health Systems, *Health Care Systems in Transition – Germany*, 2004.

Employees and employers' contributions to the Statutory Health Insurance System depend on income. The monthly premium for the statutory health insurance is currently approximately 15,5% of eligible gross salary to a maximum monthly income of 3600 Euros. In addition, there are some other user-charges: co-payments for medical and dental consultations, inpatient care, medication, and medical devices. Children are exempted from contributions, and these fees and charges are substantially reduced for people suffering from serious chronic diseases or in situations of hardship.

In the private health insurance market, the cost of full medical insurance is based on the benefits chosen, as well as on the age, gender, and any pre-existing conditions of the insured.

Asylum seekers can only access the Statutory Health Insurance System under the same conditions as nationals after forty-eight months of residence in Germany (before this date, this period was thirty-six months)[2]. Until then, they are only entitled to access free of charge medical or dental treatment in cases of "serious illness or acute pain" as well as medicines, dressing material, and "everything necessary for recovery, improvement or relief of illnesses and their consequences" (including HIV treatment and treatment of other infectious disease). They can also access ante and post natal care, vaccinations, preventive medical tests, and in some cases, dental prostheses[3]. Finally, they have free access to anonymous counselling and screening of tuberculosis and sexually transmitted diseases, including HIV/AIDS[4].

With the exception of situations of real emergency[5], asylum seekers in need of care have to apply first for a "*Krankenschein*"[6] at the competent social welfare centre. This document allows them to access free of charge the specific services they are entitled to under the sole condition of being a recipient of the Asylum Seekers Benefits Act which means to have no income.

It should be noted that in many regions however asylum seekers are given an insurance card within the first six months of their arrival with the entitlement restrictions of the Asylum Seekers Benefits Act[7].

In principle, children of asylum seekers have the same entitlements, although the law mentions that they can benefit from "other care depending on their specific needs". Traumatised people also have the possibility to access "appropriate care"[8].Asylum seekers who are required

2. Before August 2007, the reference period was thirty-six months. See §2(1) of the *Asylbewerberleistungsgesetz, AsylbLG* of 5 August 1997 (as amended). Note also that in some *länders,* asylum seekers can get the insurance card after six months of residence although with the entitlements restrictions of the *AsylbLG*.

3. See §4 of the *AsylbLG*.

4. See §19 of the *Gesetz zur Verhütung und Bekämpfung von Infektionskrankheiten beim Menschen* of 20 July 2000.

5. Hospitals can ask for reimbursement to the social welfare centres as long as the patient is neither insured nor have means to pay for the medical treatment. See § 4 and 6 of the *AsylbLG*.

6. It is not an insurance card or certification of an illness, but a document allowing the person to go to the doctor.

7. See § 4 and 6 of the *AsylbLG*.

8. See § 6 of the *AsylbLG*.

to reside in a reception centre or in collective accommodation shall be required to undergo a medical examination for communicable diseases including an x-ray of the respiratory organs[9].

Undocumented migrants have, strictly in theory, access to the same medical services and under the same conditions as asylum seekers who have been residing in Germany less than forty-eight months. Thus treatment in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses, and their consequences, post natal care, vaccinations, preventive medical tests and anonymous counselling and screening of infectious and sexually transmitted diseases[10]. They also have to apply for the "*Krankenschein*" in advance, except in case of emergency where they can directly seek health care.

There are however, some local initiatives that trying to somehow exceed this rigid legal framework. Good examples are Munich (established in 2006 a medical contact point for uninsured people), and more recently, Berlin Berlin (the government is currently examinint the adoption of an anonymous «Krankenschein» to facilitate access to health care for undocumented migrants).

The duty to denounce, an insurmountable barrier for undocumented migrants

This apparent parallelism between the entitlements of asylum seekers who have been residing less than forty-eight months and undocumented migrants does not have any reflection in daily practice. In fact, all legal information provided in this report regarding undocumented migrants' health coverage is meaningless since the social welfare offices (the competent authority to allow access provide the *Krankenschein* and reimburse hospitals) have, as any other public administrative institution in Germany and with the risk of being penalised, the legal duty to denounce undocumented migrants to the Foreigners Office[11]. Given the terminology used by the law ("*eine oeffentliche stele*" - "public administrative institution"), health care providers and public hospitals seem to be excluded from this obligation. This interpretation also appears to be confirmed by practice.

This obligation that public administrative institutions have - including the social offices in charge of health administration issues - to report the presence of undocumented migrants effectively prevents them from seeking any healthcare in the public health system in Germany. This situation happens even in the event of an emergency because although patients do not need to get the "Krankenschein" in these cases in advance, to obtain reimbursement, hospitals are obliged to transfer to the social welfare centres personal data of the patients they just treated.

The duty imposed on public administrative institutions to denounce undocumented migrants is an enormous legal obstacle overriding undocu-

9. See Section 62.1 of the *Asylverfahrensgesetz -AsylVfG* of 27 July 1993.

10. See §1 (1) (5) of the *AsylbLG* and §19 of the Federal Infectious Diseases Act. The Penal Code also states that everyone should receive help in case of emergency *(Strafgesetzbuch (StGB)* of 13 November 1998).

11. According to §87 (2) (2) *Aufenthaltsgesetz Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet* of 30 July 2004, as amended (AufenthG, the Residence Act), "any public institution immediately has to inform the Foreigners Office if it gains knowledge of the stay of a foreigner who does not possess the necessary residence permit and whose deportation has not been suspended".

mented migrants' entitlements to access health care in Germany with the few exceptions of anonymous care provided for public health reasons. Moreover, the penalisation (through fine or imprisonment) imposed by the Residence Act to anyone who assists undocumented migrants "*to irregularly stay or enter in the German territory, to overstay if acting for his or her benefit for financial gain, if doing repeatedly or for the benefits of several foreigners*" constitutes another major factor preventing undocumented migrants from seeking health care in Germany, even if there have not been examples of penalisation of medical assistance. In addition, the Ministry of the Interior has explicitly exempted medical (emergency) help and social workers (individuals or NGOs) from the scope of application of the Residence Act[12].

Only very recently, the German Parliament has adopted an implementation regulation of the Residence Act seeking to introduce some kind of flexibility on the regulation of the duty to denounce and the penalisation of assistance. According to it, the social welfare centres will not be any more obliged to denounce undocumented migrants if they are asked for reimbursement by health professionals and hospital administrations in case of emergency. Similarly, this new interpretation clarifies that the assistance to undocumented migrants will be only penalised in cases of financial gain.

Prior to the nineties (when the laws on asylum seekers were passed), asylum seekers and all immigrants (including undocumented migrants) were entitled to access health care under the same conditions as nationals with similar levels of resources[13].

12. See PICUM, *Access to health care for undocumented migrants*, p. 41.

13. See *BundessozialhilfeGesetz* of 30 June 1961.

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access to health care free of charge (paid by the public or private health insurer).

Conditions:

- To have the "Statutory health insurance" or private health insurance and show the "insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate. Full exemption for children and partial exemption for people with serious chronic illnesses (maximum: 1% of their gross annual income) and in situations of hardship (maximum: 2% of their gross annual income). In cases of private insurance, co-payments depend on specific contract.

ASYLUM SEEKERS

Entitlements:

If residence above 48 months: Same as nationals with Statutory Health Insurance.

If residence less than 48 months: Access to health care free of charge (paid with public funds).

Conditions:

- If residence over 48 months: same as nationals
- If residence less than 48 months: No particular conditions required. No need to get the "*Krankenschein*" in advance. Hospitals request reimbursement from the social welfare centres after treating the patients.

UNDOCUMENTED MIGRANTS

Entitlements:

Access to health care free of charge (paid by public funds).

NO APPLICABILITY AT ALL in practice given the duty to denounce imposed on the social welfare centres[14].

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid by the patient and the statutory health insurance.

Conditions:

- To have "Statutory health insurance" or a private health insurance and show the "insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the service (10 EUR per quarter for medical or dental consultations). Full exemption for children and partial exemption for people with serious chronic illnesses (maximum: 1% of their gross annual income) and in situations of hardship (maximum: 2% of their gross annual income). In case of private insurance, co-payments depend on specific contracts.

ASYLUM SEEKERS

Entitlements:

If residence above 48 months: Same as nationals with Statutory Health Insurance.

If residence less than 48 months: Access free of charge ONLY in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses and their consequences.

14. In September 2009 (date of finalisation of this report), the German Parliament adopted a formal interpretation of the Residence Act according to which the social welfare centres will not be bound by the duty to denounce whenever health care professionals ask them for reimbursement. Given the fact that there has been neither a formal amendment of the law nor the necessary time to proof its applicability in practice, the information provided in this country profile will be based on the situation up to September 2009.

Conditions:

- If they prove residence over 48 months: same as nationals
- If residence less than 48 months:
  - ➤ To apply in advance for the «Krankenschein» to the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge ONLY in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses and their consequences.

Conditions:

- ➤ To apply in advance for public subsidies and obtain the "*Krankenschein*" from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

NO APPLICABILITY AT ALL in practice given the duty to denounce imposed on the social welfare centres.

HOSPITALISATION (INPATIENT CARE)

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access copaid by the patient and the health insurance fund.

Conditions:

- ➤ To have the "Statutory health insurance" or private health insurance and show the "insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the service (10 EUR per day of hospital care with an annual ceiling of 28 days). Full exemption for children and partial exemption for people with serious chronic illnesses (maximum: 1% of their gross annual income) and in situations of hardship (maximum: 2% of their gross annual income). In cases of private insurance, co-payments depend on specific contracts.

ASYLUM SEEKERS

Entitlements:

If residence above 48 months: Same as nationals with Statutory Health Insurance.

If residence is less than 48 months: Access free of charge ONLY in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses and their consequences.

Conditions:

- If residence over 48 months: same as nationals
- If residence less than 48 months:
  - ➤ To apply in advance for the «Krankenschein» to the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge ONLY in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses and their consequences.

Conditions:

- ➤ To apply in advance for public subsidies and obtain the "*Krankenschein*" from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

NO APPLICABILITY AT ALL in practice given the duty to denounce imposed on the social welfare centres.

ANTE AND POST NATAL CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access to health care free of charge (paid by the public or private health insurer).

Conditions:

- ➤ To have "Statutory health insurance" or private health insurance and show the "insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate. Full exemption for children and partial exemption for people with serious chronic illnesses (maximum: 1% of their gross annual income) and in situations of hardship (maximum: 2% of their gross annual income).

ASYLUM SEEKERS

Entitlements:

If residence above 48 months: Same as nationals with Statutory Health Insurance.

If residence less than 48 months: Access free of charge (paid by public funds).

Conditions:

- If residence over 48 months: same as nationals
- If residence less than 48 months:

➤ To apply in advance for the «Krankenschein» to the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge paid with public funds.

Conditions:

➤ To apply in advance for public subsidies and obtain the "*Krankenschein*" from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

NO APPLICABILITY AT ALL in practice given the duty to denounce imposed on the social welfare centres. Thus, *the Duldung* (temporary suspension of deportation) ends up being the only possibility to receive care. *The Duldung* is normally granted from 8 weeks before giving birth to 8 weeks after giving birth and on grounds of temporary impossibility of travelling and thus deportation is only temporary suspended.

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

If Statutory Health Insurance: Access co-paid by the patient and the health insurance fund. All drugs which have proved to have positive treatment and no side-effects.

If private insurances: may reimburse total cost, depending on contract.

Conditions:

➤ To have the "Statutory health insurance" or a private health insurance and show the "insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the drugs (10% of the cost with a maximum of 10 EUR and a minimum of 5 EUR per prescription). Full exemption for children and partial exemption for people with serious chronic illnesses (maximum: 1% of their gross annual income) and in situations of hardship (maximum: 2% of their gross annual income). Other people with a lack of enough economic resources can apply to be exempted. In case of private insurance, patients must pay in advance, and then they receive reimbursement (rate depends on specific contract).

ASYLUM SEEKERS

Entitlements:

If residence above 48 months: Same as nationals with Statutory Health Insurance.
If residence less than 48 months: Access free of charge ONLY in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses and their consequences.

Conditions:

- If they prove residence over 48 months: same as nationals
- If residence less than 48 months:
  - ➤ To show a prescription (thus to apply in advance for the «Krankenschein» to the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge ONLY in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses and their consequences.

Conditions:

- ➤ To show a prescription (thus to apply in advance for public subsidies and obtain the "*Krankenschein*" from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

NO APPLICABILITY AT ALL in practice given the duty to denounce imposed on the social welfare centres.

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Screening anonymous and free of charge paid by insurers, although there are also specific local centres.

Conditions:

- If paid by the insurers:
  - ➤ To have the "Statutory health insurance" or a private health insurance and show the "insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate.
- If provided in specific centres: No particular conditions required.

ASYLUM SEEKERS

Entitlements:

If residence above 48 months: Same as nationals with Statutory Health Insurance.
If residence less than 48 months: Access free of charge (paid by public funds) in specific local centres.

If residence less than 48 months: Access free of charge (paid by public funds) in specific local centres.

Conditions:

- If residence over 48 months: same as nationals.
- If residence less than 48 months: no particular conditions required

UNDOCUMENTED MIGRANTS

Entitlements:

Access anonymous and free of charge in specific local centres.

Conditions:

No particular conditions required.

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access to health care free of charge (paid by the public or private health insurer).

Conditions:

- ➤ To have "Statutory health insurance" or private health insurance and show the "insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate. Full exemption for children and partial exemption for people with serious chronic illnesses (maximum: 1% of their gross annual income) and in situations of hardship (maximum: 2% of their gross annual income).

ASYLUM SEEKERS

Entitlements:

If residence above 48 months: Same as nationals with Statutory Health Insurance.

If residence less than 48 months: Access free of charge ONLY in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses and their consequences (HIV treatment is considered serious illness or acute pain).

Conditions:

- If residence over 48 months: same as nationals:
- If residence less than 48 months:
  - ➤ To apply in advance for the «Krankenschein» to the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge ONLY in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses and their consequences (HIV treatment is considered serious illness or acute pain).

Conditions:

➤ To apply in advance for public subsidies and obtain the "*Krankenschein*" from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

NO APPLICABILITY AT ALL in practice given the duty to denounce imposed on the social welfare centres.

TREATMENT OF OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access to health care free of charge (paid by the public or private health insurer).

Conditions:

➤ To "Statutory health insurance" or private health insurance and show the "insurance card" (thus membership in a health insurance fund) and to pay the membership contribution rate and a certain amount of the cost of the service. Full exemption for children and partial exemption for people with serious chronic illnesses (maximum: 1% of their gross annual income) and in situations of hardship (maximum: 2% of their gross annual income).

ASYLUM SEEKERS

Entitlements:

If residence above 48 months: Same as nationals with Statutory Health Insurance.

If residence less than 48 months: Access free of charge ONLY in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses and their consequences.

Conditions:

- If residence over 48 months: same as nationals
- If residence less than 48 months:

➤ To apply in advance for public subsidies and obtain the "*Krankenschein*" from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge ONLY in cases of serious illness or acute pain and everything necessary for recovery, improvement or relief of illnesses and their consequences.

Conditions:

- To apply in advance for public subsidies and obtain the "*Krankenschein*" from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

NO APPLICABILITY AT ALL in practice given the duty to denounce imposed on the social welfare centres.

CHILDREN

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access to health care free of charge (paid by the public or private health insurer).
Vaccinations: are not compulsory (only recommended) and are free of charge (paid by the public or private health insurer)[15].

Conditions:

- To have "Statutory health insurance" or private health insurance and show the "health insurance card" (thus membership in a health insurance fund). In the Statutory health insurance scheme, children are exempted from paying contributions and other user charges. In private schemes, it depends on contracts, but parents generally have to pay a contribution to register their children.

ASYLUM SEEKERS' CHILDREN

Entitlements:

If residence above 48 months: Same as nationals with Statutory Health Insurance.
If residence less than 48 months: Access free of charge to almost all care ("they can benefit from other care depending on their specific needs") (only few restrictions applying)..

Conditions:

- If residence over 48 months: same as nationals:
- If residence less than 48 months:
  - To apply in advance for public subsidies and obtain the "*Krankenschein*" from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

15. For the list of vaccinations, see *Robert Koch Institut:* www.rki.de/cln_091/nn_199596/DE/Content/Infekt/Impfen/Impfempfehlungen/Impfempfehlungen__node.html?__nnn=true

UNACCOMPANIED ASYLUM SEEKING CHILDREN

Entitlements:

If residence above 48 months: Same as nationals with Statutory Health Insurance.

If residence less than 48 months: Access free of charge to almost all care ("they can benefit from other care depending on their specific needs") (only few restrictions applying).

Conditions:

- If residence over 48 months: same as nationals:
- If residence less than 48 months:
  - ➤ To apply in advance for the "*Krankenschein"* from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

UNACCOMPANIED (MIGRANT) CHILDREN

Entitlements:

Access free of charge to almost all care ("they can benefit from other care depending on their specific needs") (only few restrictions applying).

Conditions:

- ➤ To apply in advance for public subsidies and obtain the "*Krankenschein*" from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

NO APPLICABILITY AT ALL in practice given the duty to denounce imposed on the social welfare centres.

CHILDREN OF UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge to almost all care ("they can benefit from other care depending on their specific needs") (only few restrictions applying).

Conditions:

- ➤ To apply in advance for public subsidies and obtain the "*Krankenschein*" from the social welfare centres (this implies being a recipient of the Asylum Seekers Benefits Act).

NO APPLICABILITY AT ALL in practice given the duty to denounce imposed on the social welfare centres.

DETENTION CENTRES

ADULTS

Regulated at länder level[16]. Two exemples :
Berlin: Access to health care inside detention centres any time if there is a need (under the responsibility of the medical staff of the centre and the head of the police in Berlin). The medical staff of the centre has the competence to assess the incapability to be detained or to travel. Those individuals responsible for the centre are competent to evaluate the demand to be treated by an external medical doctor[17].
Bavaria: Undocumented migrants are placed in common prison settings. The general rules on detention apply to them: Access free of charge to physical and mental healthcare, treatment and rehabilitation, access to prevention for persons below 35 with chronic diseases. However, they could be asked to participate in the cost of the care and treatment[18].

CHILDREN

Same as adults.

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status: On the risk of being penalised, any public administrative institution in Germany has the legal duty to immediately denounce undocumented migrants to the Foreigners Office if they "gain knowledge of the stay of a foreigner who does not possess the necessary residence permit and whose deportation has not been suspended"[19]. The fact that Social Welfare Centres are obliged to denounce undocumented migrants have very serious implications in the effective access to health care for undocumented migrants since they are the authorities in charge of allowing access to health care and reimbursement to providers of health care to undocumented migrants.

Although there is a high degree of uncertainty regarding the interpretation of this provision, health care providers are not bound by this duty to denounce. It is less clear however whether this also applies to public hospitals[20].

16. "Some *länders* like Bavaria apply the general legislation on detention. Others, like Berlin, have specific regulations on detention centres.

17. See point 2.7.5. of the *Gesetz über den Abschiebungsgewahrsam im Land Berlin* of 9 February 2004.

18. See Articles 59-68 of the *Bayerisches Straffvollzugsgesetz 15/9382* of 27 November 2007.

19. See Section 87(2) n. 2 of the *AufenthG.*

20. See PICUM, *Access to health care for undocumented migrants*, p. 40.

NON EXPULSION FOR MEDICAL REASONS

NO RESORT TO EXPULSION SANCTIONS OR SUSPENSION OF EXPULSION ORDERS FOR MEDICAL REASONS: "DULDUNG – TEMPORARY SUSPENSION OF DEPORTATION"[21]

The deportation of a foreigner shall be suspended for as long as deportation is impossible in fact or in law and no residence permit is granted. A foreigner may be granted a temporary suspension of deportation if his or her continued presence in the Federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests.

It is not a residence permit, it does not affect the foreigner's obligation to leave the Federal territory once the "temporary suspension of deportation" comes to and end [22]. Once granted, applicants receive a certificate.

WHO ?

Seriously ill undocumented migrants

CONDITIONS:

- Severe health problems that preclude travelling by the applicant or a member of their family[23].

DURATION:

- Six months maximum[24],although it can be renewed on discretionary decision of the competent authority depending the circumstances of the particular case. The *Duldung* should be revoked upon the circumstances preventing deportation ceasing to apply (section 60a(5)). After 18 months of suspension, they can apply for a "residence permit on humanitarian grounds"[25].

ACCESS TO HEALTH CARE:

Health coverage on the basis of the Asylum Seekers Benefits Act.

RESIDENCE PERMIT FOR MEDICAL REASONS: "RESIDENCE PERMIT IN CASES OF HARDSHIP"[26]

WHO ?

Severely ill undocumented migrants.

21. See Section 60a of the *AufenthG.*

22. See Section 60a (3) of the *AufenthG.*

23. The legal basis for *Duldung* for family members is only found in Article 6 of the German Constitution.

24. See Section 60a(2) of the *AufenthG.*

25. See 25(5) of the *AufenthG.*

26. See § 23a of the *AufenthG.*

CONDITIONS:

- Urgent humanitarian or personal grounds must justify the foreigner's continued presence in the Federal territory"[27].
- The applicant must have an enforceable order of expulsion (no possibility of appeal)[28].
- The applicant must have not committed any offence of considerable severity[29].
- Applications must be submitted by the Hardship Commission to the supreme Land authority. The supreme Land authority is competent to establish a Hardship Commission, specify the procedure, grounds of exclusion, and qualified requirements in each Land[30].

Practice shows that this permit is only given whenever no other residence permits can be granted and always in combination with another cause aside from health reasons.

DURATION:

Maximum period of three years depending on the decision of the supreme Land authority. Possibility of renewal[31].

ACCESS TO HEALTH CARE:

Same as nationals (Statutory health Insurance or the scheme in place for social benefits recipients (low income).

RESIDENCE PERMIT FOR MEDICAL REASONS: "RESIDENCE PERMIT ON HUMANITARIAN GROUNDS"[32]

SECTION 25(5) OF THE RESIDENCE ACT

WHO ?

Severely ill undocumented migrants

CONDITIONS:

- The deportation must be enforceable but "deportation is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future".
- The deportation has been suspended for 18 months.
- Permit may not be granted if it is possible to leave the country voluntarily or in case of misconduct on the part of the non-citizen (e.g. attempt to disguise true identity or nationality).

DURATION:

No longer than six months when "the foreigner has not been legally residing

27. "See Section 23a(2) of the *AufenthG.*

28. "See Section 23a(1) of the *AufenthG.*

29. Ibid.

30. See Section 23a(2) of the AufenthG. For instance, Bavaria has had a Hardship Commission since August 2006 composed of 1 person from the Catholic and the Evangelical Church; 3 persons of non-church affiliated non-governmental social organisations; 4 persons of the main local political parties; 1 person from the Ministry or interior (observer). According to the applicable legislation in this länder, no residence permit on these grounds will be granted if there is an abusive delay in ending the residence, a failure to present a pass, a penal offence, danger to national security, absence of secured income, justification of the hardship only based on the asylum procedure.

31. Section 26(1) of the *AufenthG.*

32. Section 26(5) of the *AufenthG.*

in the Federal territory for at least 18 months". Permit not extended if the obstacles to departure have ceased to apply[33].

ACCESS TO HEALTH CARE:

Same as nationals (Statutory health Insurance or the scheme in placed for social benefits recipients (low income).

SECTION 25(4) OF THE RESIDENCE ACT

WHO?

Severely ill undocumented migrants.

CONDITIONS:

- No expulsion order has been adopted.
- The applicant's presence in the Federal territory must be necessary on urgent humanitarian or personal grounds or due to substantial public interests.

DURATION:

Temporary but it can be extended if departure from the Federal territory would constitute exceptional hardship for the foreigner due to special circumstances pertaining to the individual case concerned.

ACCESS TO HEALTH CARE:

Same as nationals (Statutory health Insurance or the scheme in placed for social benefits recipients (low income).

SECTION 25(3) IN CONJUNCTION WITH SECTION 60(7) OF THE RESIDENCE ACT

WHO ?

Severely ill undocumented migrants.

CONDITIONS:

- Deportation to another state implies a substantial concrete danger to his or her life and limb or liberty applies (the obstacle to expulsion has been identified). According to the case law of the Federal Administrative Court, "these conditions are inter alia complied with if the person concerned would face a grave and serious health impairment shortly after return because the illness cannot be adequately treated in the country of origin"[34].

- The permit shall not be granted if departure for subsequent admission to another state is possible and reasonable. The foreigner has repeatedly or grossly breached duties to cooperate or serious grounds warrants the assumption that the foreigner: i) committed a crime against peace, a war crime or crime against humanity; ii) committed an offence of considerable

33. Section 26(1) and (2) of the *AufenthG*.

34. See PICUM, *Undocumented and seriously ill: Residence Permits for Medical Reasons in Europe*, 2009, p. 21.

severity; iii) is guilty of actscontrary to the objectives and principles of United Nations; or iv) for public security reasons.

- Applications must be submitted to the local authorities dealing with immigration issues if they never applied for asylum. The National Office for Migration and Refugees (BAMF) gives an opinion after getting information from the Ministry of Foreign Affairs or German embassies. Applicant must submit a medical certificate issued by the treating doctors although the competent authority may request a certificate from the public health inspector. A positive decision may be granted only if an obstacle to expulsion has been determined.

DURATION:

Maximum period of six months. Possibility of renewal as long as the situation remains[36].

ACCESS TO HEALTH CARE:

Same as nationals (Statutory health Insurance or the scheme in placed for social benefits recipients with low income).

35. See 26(5) of the *AufenthG.*

IN PRACTICE

REGARDING THE SITUATION IN PRACTICE

"Health care for undocumented migrants in Germany is substandard. That is the clear finding of field reports and scientific studies. In particular, doctors report that undocumented migrants seek medical assistance too late or not at all, and that in many cases the chance of early diagnosis and treatment is missed. Illnesses become unnecessarily serious and possible consequences include avoidable hospital stays and the risk of conditions becoming chronic. Particular difficulties are associated with pregnancy and childbirth for undocumented migrants.

The central legal right to medical treatment under the Asylum Seekers Benefits Act – which is considerably below the standards of the statutory health insurance system - is rarely taken up by undocumented migrants. The fear of discovery of their status leads them to make little or no use at all of their right to medical treatment.

The key reason for the structural underprovision of health care for undocumented migrants is the official duty to report contained under the Residence Act, under which official bodies (such as welfare offices) are obliged to inform the Immigration authorities if they learn about a foreigner living without legal residence status.

No other European state has a reporting obligation of this kind in the elementary field of health care. From the perspective of undocumented migrants, the duty to report represents the central obstacle for obtaining health care. For this reason, they use their legal right to medical treatment only in emergencies. A second factor that adds to the problem is the overwhelming poverty of this group. Paying for treatment themselves is generally beyond their financial means, so undocumented migrants almost always depend on support to receive medical care.

Consequently, the duty to report fails as a control instrument. The de facto outcome – that undocumented migrants fail to use their social right to medical care – cannot be the purpose of the duty to report. In this context it becomes clear why churches, charities, and Human Rights organisations place such emphasis on the issue of the duty to report"[37].

36. Extract from the report German Institute for Human Rights, *Undocumented Migrants in Germany – Their right to Health: report of the National Working Group on Health and Illegality,* Berlin, 2007.

THE VISION OF MDM GERMANY REGARDING THE SITUATION IN PRACTICE

Access to health care for undocumented migrants - adults:

Access to healthcare in outpatient and inpatient settings for undocumented migrants may be formally possible, but it is in fact linked to risks in respect to the law governing foreigners. If they do not wish to risk being registered with the immigration authorities, they must pay the costs of treatment themselves. Thus healthcare providers are often not sought in the first place for fear of the possible consequences.

In Germany, however, there are many low-threshold, mostly non-governmental medical offers, in which there is the possibility to be treated free of charge and anonymously. Medical care can also partially take place through municipal institutions. All municipalities are obligated to provide low-threshold and anonymous offers to those in need, especially in the sphere of infectious diseases (HIV/AIDS, TBC, STD). In Munich, for example, the medical outpatient unit for sexually infectious diseases of the Department for Health and the Environment provides clinical and gynaecological examinations, anonymously and free of charge.

These municipal or non-governmental clinics can be used by undocumented migrants. Nevertheless, they care for often closely defined target groups (homeless persons, sex-workers, etc.) with specific problems (pregnancy/abortion, HIV, addiction, etc.) and seldom offer comprehensive therapeutic measures, generally not even emergency treatment.

In recent years there have been medical offers established to target undocumented migrants and those without health insurance, for example, the clinic of *Ärzte der Welt* and café 104 in Munich, or the so-called "*Medinetze*" in most large cities (such as Berlin). These offices, however, can generally only offer mediation and sometimes only basic medical care.

Access to health care for asylum seekers - adults:

The access to healthcare of asylum seekers is regulated in the Asylum Seekers Benefits Act. The cover of costs for treatment in the case of illness takes place only for acute illnesses and states of pain and for the alleviation of illnesses or their consequences. The prerequisite for access to this limited medical care is that asylum seekers apply to the social security office for a health insurance certificate.

With this health insurance certificate they can seek a general practitioner. In many communities, in the meantime, a form of medical insurance card (similar to recipients of social security benefit) is given only after a few months following entry from abroad. The extent of services, however, is in accord with legal requirements. Application for a letter of referral must be made for necessary specialist visits if the occasion arises. Above all, the provision of dentures, wheelchairs, assistance, and so on, is only possible if the medical necessity is approved by the respective social security office. A certificate is generally granted by the public health department.
Medical care for asylum seekers is generally linked to administrative difficulties,

which, in addition to the frequent language barriers and the lack of knowledge about the German health system, make access difficult and in some cases (for example in cases of severe trauma) almost impossible.

Access to health care for undocumented migrants and asylum seekers – children:

Children of asylum seekers and of undocumented migrants have access to the same care as adults. However, the law provides that children can benefit from additional preventive measures and treatments, depending on their specific needs.

Access to healthcare in the outpatient and inpatient settings for children of undocumented migrants is also linked to the danger of being registered with the immigration authority.

Community, charity or humanitarian organisations' programmes are sometimes targeted to children. In addition, families with children under the age of three years can for example be visited and counselled by nurses in many large cities. This municipal service can be carried out anonymously and free of charge.

Non expulsion for medical reasons:

If an undocumented migrant suffers from a severe, life-threatening illness, the establishment of a hindrance to deportation can be applied for. In principle, there is a hindrance if due to the person's state of health no travel can be undertaken or if the illness cannot be treated in the country of origin and the person concerned is in danger of dying from the illness or suffering severe limitations to his or her state of health. The establishment of a hindrance to deportation can be applied for within the sphere of an application for political asylum or directly with the immigration authority.

A large role is played by the information given by German embassies in the establishment of a hindrance to deportation due to illness. In this information, unfortunately, the situation of medical care is often glossed over. For example, only the situation in the capital of the country of origin is depicted, or the general care situation is inferred by the privileged situation of local embassy officials. We have observed for some time that there have been efforts made by immigration authorities and the Federal Ministry for Migration and Refugees to evade medically contingent hindrances to deportation by giving medication. Thus it repeatedly occurs that people are threatened with deportation despite having a severe illness that cannot be treated in their countries of origin.

This information refers to "Residence permits on humanitarian grounds". "Residence permits in cases of hardship" potentially only concern persons who cannot get other residence permit on other legal grounds and it implies to claim an additional reason besides a serious illness (very good integration...). Thus, it is not very likely to be granted in these cases.

For pregnant undocumented migrant women there is the possibility to receive provisional toleration, Duldung, (in Munich among other places) eight weeks before and eight weeks after giving birth. This is used above all if there exits a right to residence for the mother after the birth of the child.

Artze Der Welt - Germany

ITALY

HEALTH SYSTEM

Italy has a tax-based National Health Service based on the principle of solidarity and seeking to grant universal coverage to a uniform level of care throughout the country. Responsibilities are shared among the central government and the regions. Local health authorities are responsible for the delivery of health care services at the local level. This system is combined with complementary private health insurance.

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

The Italian Constitution guarantees everyone's right to health and access to health care free of charge for indigent people[1]. The whole population "regardless of individual or social status" is entitled to access the basic benefit package ("*Livelli Essenziali di Assistenza sanitaria*") within the National Health Service[2]. To this aim, **nationals and authorised residents** have to register with the NHS at the local health administration (*Azienda Sanitaria Locale*, *ASL*) that will provide them with the "health card" ("*tessera sanitaria*"). Registering in the NHS is free of charge for workers or self-employed individuals who pay income taxes, unemployed people who are enrolled with an employment agency, persons with refugee status, asylum seekers, and children of all these categories of persons. People who do not fit these requirements will have to pay approximately 388€[3].

The basic benefit package is determined by the central government and it is comprised of all types of care with some exceptions such as aesthetic surgery, ritual male circumcision, vaccinations for abroad visits, and physiotherapy for transitional or minor problems[4].

While some health services comprised in the basic benefit package are completely free of charge, some others are co-paid by the user through a moderating fee ("*ticket*"): specialist consultations, day hospitalisation after diagnosis procedures, some pharmaceuticals, thermal assistance, and out-clinic rehabilitation. Regarding the amount and payment of the "*ticket*", the payments are different among regions and some exceptions linked to age, income[5], and type of illness, including work-related disability (above 2/3), partial blindness, deaf-mute, rare illness, early diagnosis and screening, maternity care, HIV prevention, and services against epidemics provided by law[6].

1. Article 32 of the Italian Constitution: "*La Repubblica tutela la salute come fondamentale diritto dell'individuo e interesse della collettività, e garantisce cure gratuite agli indigenti (...)*".

2. See capo I.1 of *Legge n. 833 - Istituzione del servizio sanitario nazionale* of 23 December 1978.

3. See www.stranieriinitalia.it

4. There are also other exceptions depending on the "clinic appropriateness" criteria. See Ministero della Salute, *Libro bianco sui principi fondamentali del servizio sanitario nazionale*, 2008, pp. 36-37.

5. Children under six and people over sixty-five as long as their family income does not exceed € 36,151.98; people over sixty receiving minimum pension benefits with a family to care for as long as the family's income does not exceed 8,263.31(if taking care of the spouse) and 11,362.05 (if not taking care of the spouse) (to this amount, it is added 516.45 for each child); those whose disability exceeds 2/3; and those receiving invalidity benefit from the state.

6. See Ministero della Salute, *Libro bianco*, pp. 60-62.

Asylum seekers have the right to register in the Italian National Health System and receive health care on equal grounds as nationals and upon the same conditions.

Undocumented migrants are not entitled to register in the NHS however, since 1998, they can access to the services offered by the National Health System as long as they are granted a "STP code" (*Stranieri Temporaneamente Presenti* – temporary residing foreigner code)[7].

The "STP code" allows them to access (free of charge or upon the payment of a nominal contribution, depending of the type of care) a wide range of health services: a) "urgent" and "essential" medical care (including continual treatment); b) preventive care; c) care provided for public health reasons including prenatal and maternity care, care for children, vaccinations, and diagnosis and treatment of infectious diseases.

While the concept of "urgent medical care" (cure urgenti) is defined narrowly as care that cannot be postponed without jeopardising the migrant's life or damaging his/her health, the concept "essential medical care" (cure essenziali) is very broad and is connected to diseases which are not dangerous in the short term, but which could subsequently entail serious damages and risks for the migrant's health.

The "STP code" is anonymous, free of charge and has a validity of six months with possibility of renewal. It is granted by the *ASL* and can be obtained by undocumented migrants at anytime. To obtain it, they also have to apply for the "indigence status" (*stato di indigenza*) declaring their precarious economic situation. This "status" does not however excuse them from the obligation to pay the "ticket". In March 2008, a new decree of the Ministry of Economy and Finance has included undocumented migrants among the categories of persons who do not have to pay the "ticket" for any medical service. This provision is however mostly unknown and therefore largely unapplied[8].

Very recently, there has been an attempt by the government to require undocumented migrants to pay the full cost of the care received and to replace the prohibition that health providers denounce undocumented migrants by the duty to denounce (in the original proposal) and then by a choice of denouncing to be made by health professionals according to their freedom of conscience (in the amended text). Fortunately, none of these proposals were ever passed[9].

7. Regarding the system applying to undocumented migrants see Articles 35 and 43 of the *Decreto Legislativo n. 286 - Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, Gazzetta Ufficiale n.191 del 19 agosto 1998 – Supplemento Ordinario n. 139 of* 25 July *1998;* Article 43 of the *Decreto del Presidente della Republica n. 394 -Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero a norma dell'articolo 1, comma 6 del Decreto Legislativo n. 286 de 25 luglio 1998 of* 31 August 1999*; Gazzetta Ufficiale n.190 - Supplemento Ordinario n. 258 of 3 November 1999; Section II B of the Circolare n. 5 del Ministero della. Sanità* of 24 March 2000.

8. See 8.27 allegato 12 of the *Decreto dell Ministero dell'Economia e della Finance* of 17 March 2008.

9. *See Disegno di Legge 2180 - Disposizioni in materia di sicurezza pubblica* of 5 February 2009; *Legge n. 38 - Conversione in legge, con modificazioni, del decreto-legge 23 febbraio 2009, n. 11, recante misure urgenti in materia di sicurezza pubblica e di contrasto alla violenza sessuale, nonchè in tema di atti persecutori, Gazzetta Ufficiale n. 95 del 24 aprile 2009* of 23 April 2009.

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
- To register in the NHS and show the "health card".

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
- To obtain the "STP code" (a STP code is provided immediately).

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge for primary care and co-paid (moderating fee) for secondary care.

Conditions:
- To register in the NHS and show the "health card";
- To pay the "ticket" (only for secondary care, around 16 €). Exceptions: linked to age, income and type of illness, including work-related disability (above 2/3), partial blindness, deaf-mute, rare illness, early diagnosis and screening, HIV prevention and services against epidemics provided by law; and
- Previous authorisation by family doctor to access secondary care.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals, (although in their case they have to submit a valid certificate showing that they have formally applied for asylum to get registered in the NHS).

UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge ONLY if considered "essential" or of a preventive nature. No possibility to register with a family doctor.

Conditions:

- To obtain the "STP code"; and
- In practice, they also pay the moderating fee.Problem: No possibility to register with a family doctor, thus problems to access primary and secondary care since secondary care is provided only if previously authorised by the family doctor.

HOSPITALISATION (INPATIENT CARE)

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid (moderating fee).

Conditions:

- To register in the NHS and show the "health card"; and
- Pay the "ticket" for day hospitalisation after diagnosis procedures (around 45€). Exceptions: linked to age, income and type of illness, including work-related disability (above 2/3), partial blindness, deaf-mute and rare illness.

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge ONLY if considered "essential".

Conditions:

- To obtain the "STP code"; and
- In practice, they also pay the moderating fee.

ANTE AND POST NATAL CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

- To register in the NHS and show the "health card".

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:

- To obtain the "STP code".

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge or co-paid (payment of certain amount of the cost depending on the category of medicines).

Conditions:

- To register in the NHS and show the "health card"; and
- To pay certain amount of the cost of the pharmaceuticals: 0% for Category A (severe diseases); 50% for Category B and 100% for Category C. Exceptions: Children, people above 65 and persons with specific chronic diseases.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:

- To obtain the "STP code"; and
- To pay certain amount of the cost of the pharmaceuticals: 0% for Category A (severe diseases); 50% for Category B and 100% for Category C. Exceptions: Children, people above 65 and persons with specific chronic diseases.

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Screening anonymous and free of charge.

Conditions:
➤ To register in the NHS and show the "health card".

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
➤ To obtain the "STP code".

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
➤ To register in the NHS and show the "health card".

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
➤ To obtain the "STP code".

TREATMENT OF OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge for treatment of "exonerated pathologies" in outpatient special departments.

Conditions:
➤ To register in the NHS and show the "health card".

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
➤ To obtain the "STP code".

CHILDREN

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge for children below eighteen years.
Vaccination: Some are compulsory[10], others are recommended.

Conditions:
➤ To register in the NHS and show the "health card".

ASYLUM SEEKERS' CHILDREN

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

10. Diphtheria, tetanus, polio and hepatitis B.

UNACCOMPANIED ASYLUM SEEKING CHILDREN

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNACCOMPANIED (MIGRANT) CHILDREN

Entitlements:
Same as nationals.

Conditions:
➤ Same as nationals (they are granted a residence permit and registered in the NHS)[11].

CHILDREN OF UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals[12].

Conditions:
➤ To obtain the "STP code".

DETENTION CENTRES

ADULTS

Access to "essential" health care.

CHILDREN

Children (unaccompanied or accompanied) cannot be confined in detention centres but in centres for minors and open reception centres. They access health care in health centres or hospitals of the National Health System[13].

11. PICUM, *Undocumented children in Europe: Invisible Victims of Immigration Restrictions*, 2008, p. 50.

12. Article 35(3)(b) of the *Testo Unico*.

13. European Parliament – Directorate General internal policies, "*Conditions des ressortissants de pays tiers retenus dans des centres (camps de détention, centres ouverts, ainsi que des zones de transit), avec une attention particulière portée aux services et moyens en faveurs des personnes aux besoins spécifiques au sein des 25 Etats membres de l'Union Européenne*". Rapport de visite en Italie, 2007, pp. 10-11 (REF: IP/C/LIBE/IC/2006-181), available at www.cimade.org/uploads/File/admin/rapport_Italie.pdf. Pregnant women cannot either be confined in a detention centre (CPTA), only in open reception centres (CPA).

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status:
It continues to be prohibited by law that health institutions and professionals denounce undocumented migrants to the immigration authorities[14]. The sole exception is for public security reasons or if there has been an injury connected to a criminal offence.

NON EXPULSION FOR MEDICAL REASONS

NO RESORT TO EXPULSION SANCTIONS OR SUSPENSION OF EXPULSION ORDERS FOR MEDICAL REASONS

Although it is not provided formally by the law[15] according to the Italian Constitutional Court, Articles 2 and 32 of the Italian Constitution (protection of human beings « inviolable rights and everyone's right to health) and Article 2 of the "Single text on Immigration" (protection of human rights of all foreigners present in Italy or at the border according to national law and international conventions and general principles)[16] constitute enough legal bases to protect seriously ill undocumented migrants against expulsion inasmuch as the expulsion can entail a irreparable harm to the migrant's right to health[17] ».

RESIDENCE PERMIT FOR MEDICAL REASONS ("RESIDENCE PERMIT FOR HUMANITARIAN REASONS")

The legal regulation of this type of permit is extremely insufficient and unclear. The law provides for a "residence permit for humanitarian reasons". However, it neither clearly specifies the scope of application, nor does it define what should be understood by the term "humanitarian character". In principle, nothing seems to prevent an interpretation of this term as to include a serious illness.

WHO ?

Severely ill undocumented migrants and severely ill rejected asylum seekers[18].

14. Article 35(5) of the *Testo Unico*.

15. Children below eighteen, pregnant women and mothers whose children are below six months are however protected against expulsion. This also applies to persons who risk to be prosecuted on grounds of race, gender, language, citizenship, religion, political opinion and personal or social condition. See Articles 19(1) and (2) of the *Testo Unico*.

16. See Article 2 of the *Testo Unico*.

17. See Judgement of the Constitutional Court n. 252 of 17 July 2001.

18. Article 5(6) of the *Testo Unico* and Article 11(1)(c ter) of the *Decreto del Presidente della Repubblica N. 394* of 31 August 1999. As for rejected asylum seekers, see Article 32(3) of the Decreto legislativo n. 25 - *Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato* of 28 January 2008.

CONDITIONS:

➤ "Serious humanitarian reasons".

Two situations:

- If the applicants are undocumented migrants:
  - ➤ Competent authority: "*Questura*" (police).
- If applicants are rejected asylum seekers:
  - ➤ Asylum has been rejected.
  - ➤ The law specifically provides that this permit will be granted by the "Questura" of the area of residence upon request of the authority dealing with the application for asylum[19].

DURATION:

➤ No clear applied legal provision. According to practice, the duration is typically one year[20].

ACCESS TO HEALTH CARE:

➤ They are entitled to register with the National Health Service and access health care on equal grounds as nationals and other authorised residents[21].

The jurisprudence has gone beyond this weak legal regulation. In fact, based on the abovementioned ruling of the Constitutional Court, the Administrative Courts have stated several times that *"undocumented migrants residing in Italy have the right to obtain an appropriate residence permit on medical grounds for the necessary time to access "urgent medical care" or "care that they cannot receive in the country of origin"*[22]. This jurisprudence however still needs to be reflected in the Italian legislation. In any case, even the jurisprudence lacks precision for instance, it does not give any guidance for cases where the treatment is available and accessible in the country of origin, but he/she cannot travel due to medical reasons.

19. See Article 34(5) of the *Decreto Legislativo n. 251* of 19 November 2007.

20. The following provision could refer to the duration but it is not clear as to whether it is applicable: Article 5(3) (e) of the Testo Unico. See also Article 11(1) of the *Decreto del Presidente della Repubblica n. 394* of 31 August 1999: "the duration will never exceed the time of the documented necessity ("*non puo essere superiore alle necessità specificamente documentate*").

21. Rejected asylum seekers with a residence permit on humanitarian grounds have the same rights than those recognised to persons with "subsidiarity protection". See Art. 34 of the *Decreto Legislativo n. 251* of 19 November 2007.

22. Judgements of the Regional Administrative Court of Liguria, n. 218 of 15 March 2006 and of the Regional Administrative Court of Lazio I-ter, n. 5344 of 9 June 2006.

IN PRACTICE

THE VISION OF MÉDECINS SANS FRONTIÈRES[23] ITALY REGARDING THE SITUATION IN PRACTICE[24]

Access to health care for undocumented migrants – adults and children:

Obtaining the STP code is rather easy and there are not major barriers. However, the existence of wide legal entitlements does not automatically guarantee the effective of rights by undocumented migrants. The main practical obstacles that undocumented migrants encounter concern language and cultural barriers, lack of information, and the fear to be requested to pay or fear to be reported to the police (even if the law forbids doctors to denounce them). These circumstances prevent migrants from seeking health care sometimes even at clinics run by volunteer organisations.

Free-of-charge access to dental or mental care is not easy and can be considered as a structural problem that also affects Italian nationals. There are typically long waiting lists.

Undocumented children face similar obstacles as adults. However, it is important to note that they do not have access to a paediatrician.

Since 1999, Médecins Sans Frontière has managed health assistance projects in areas where there are many undocumented migrants and asylum seekers facing a situation of serious exclusion and marginalization and without any access to health care. The main activities carried out are direct basic health care assistance, cultural mediation to avoid language barriers, outreach to raise awareness among migrants, advocacy to raise awareness among health institutions, and demonstrations to raise awareness among political institutions and local population. The goal of Médecins Sans Frontière is to cease medical assistance activities and cultural medication as soon as these tasks are taken over by the local health institutions.

Each year, in some areas of Southern Italy, a massive flow of seasonal migrant agricultural workers takes place. Local authorities either do not deal with this trend at all or, in some sporadic cases, adopt certain measures only applicable to authorised migrants. Despite legal entitlements, seasonal workers are not granted access to health services and live in grave conditions of marginalisation and social exclusion. This is determined both by the lack of information services catering the immigrant community, and to the lack of first-line clinics focused on undocumented migrants.

23. *Médecins sans Frontières* Italy is not a member of the HUMA network however their practice in the field of undocumented migrants' health in Italy is a precious source of information in the framework of this report.

24. About the situation in practice and the role of civil society in Italy, see also PICUM, *Access to health care for undocumented migrants*, pp. 53-59.

Access to health care for asylum seekers - adults:

Asylum seekers who do not reside in an asylum centre encounter problems to receive care from a general practitioner. They also face administrative barriers. To gain full access to health care, they need to prove that they regularly live in a house by showing an official lease or an official statement of the owner of the house. The effect of these conditions is that many houseless asylum seekers access health care on same conditions as undocumented migrants.

In reception centres (CARA) for asylum seekers, there is a lack of standardization of patient management. Pregnant women and inmates with diseases do not receive well-structured professional medical care, provided by specifically trained professionals. The care received in the centres appeared to be strongly dependent on the attitude and willingness of the medical staff working in each centre. Patients often received a placebo instead of adequate medication. Médecins Sans Frontière visited the reception centres in November-December 2008 and is currently drafting a report on this issue.

Access to health care in detention centres:

The quality of medical services in detention centres (CIE) has often been questioned, and in general the outside world is unable to see what goes on inside the centres. There is an unstructurated “emergency” approach, consisting of isolated activities and sporadic management of individual cases. Inmates are rarely provided with medical documentation when they leave. This is even true for patients with known diseases. In general, it seems that some forms of health care (e.g. dental care, mental care) are postponed during the detention period. Patients often received a placebo instead of adequate medication. Médecins Sans Frontières visited the detention centres in November-December 2008 and is currently drafting a report on this issue.

Transfer or access to information about administrative status:

Italian legislation continues to prohibit health administration to report undocumented migrants to the police. Nevertheless, after the attempt by the government to erase this prohibition in 2008-2009, according to unofficial estimates of the trade unions (CGIL-CISL-UIL), the amount of undocumented migrants seeking medical help has decreased by nearly 10-20% in the first three months of 2009.

Non expulsion for medical reasons:

A permit to stay for humanitarian reasons on medical grounds can be obtained when a medical report certifies that adequate medical care is not available in the country of origin (e.g. lack of medicines, uncertainty about treatment) or

that access to health care is very expensive, or the migrant cannot travel due to medical reasons.

Many doctors do not issue these medical certificates simply because they do not know how important it is to report this information about the patient or because they have no idea about the national health system in the migrant's country of origin.

A permit on medical grounds always has to be renewed at least once per year. Throughout the procedure, the applicant cannot claim the right to shelter nor to health insurance. When the applicant gets a temporary residence permit, then he or she can ask for the right to work.

Medici Senza Frontiere - Italia

MALTA

HEALTH SYSTEM

A tax funded National Health System. Private health services exist alongside the public system.

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

Nationals and authorised residents[1] are entitled to access free of charge preventive, investigative, curative and rehabilitative services in public health centres and hospitals. Employed and self-employed persons pay together with employers, an income-based social security contribution; however, their dependents as well as unemployed and retired persons are also covered.

Health coverage is extended for some categories of individuals if eligible for "sickness assistance", "leprosy assistance", tuberculosis assistance", "free medical aid" or "milk grant". They pay social security contributions unless they are unemployed.

Individuals with a proven low level of income (the threshold is around 450 EUR a month and 100 EUR for unemployed) receive the "pink card". This card allows them to access "free medical aid" meaning to access free drugs, spectacles, dentures, and other prosthetic aids[2]. Persons with specific chronic diseases can have "sickness assistance" ("yellow card") and thus are able to obtain free of charge those medicines listed on their card for a definite or indefinite period, depending on the disease concerned[3].
In addition, persons with tuberculosis, leprosy, or poliomyelitis also have an extended coverage consisting of access free of charge to the specific needed care and treatment.

Asylum seekers are entitled to "state medical care and services"[4] but are required to "cover or contribute to the cost of health care if they have sufficient resources"[5]. Moreover, under "exceptional circumstances" the law provides the possibility to modify these reception conditions in case "asylum seekers are in detention or confined to a border post" provided that "these different conditions cover basic needs"[6].

1. No law establishes that they have access to health care on equal grounds as nationals except for refugees.

2. See Article 23(1) of the Social Security Act of 1987 (as amended).

3. See Part II of the Fifth Schedule of the *Social Security Act* for the list of diseases that entitle to "free medical aid".

4. See Article 13(2) of the *Refugees Act* of 1 October 2001.

5. See Article 11(4) of *the Subsidiary Legislation 420.06* - Reception of Asylum Seekers (Minimum Standards) Regulations of 22 November 2005. According to the Jesuit Refugee Services in Malta, it seems that this provision has never been applied.

6. See Article 12(6) of the *Subsidiary Legislation 420.06* of 22 November 2005.

The legislation does not specify the meaning of "state medical care and services" and whether asylum seekers have the right to access health care under the same conditions as nationals in the public system or if they are covered under a specific scheme. Although it is generally understood as access free of charge to all medical services that nationals receive, this ambiguity leaves the door open to discretionary practices. In addition, the fact that many asylum seekers are in detention in Malta provokes that access to care and medicines in practice largely depend on the willingness and logics of the soldiers in charge of managing the centres and end up being reduced to emergency care or primary care through the scarce medical facilities of the detention centre.

No legal or administrative provision refers to **undocumented migrants**' entitlements to access health care in Malta. There is only a non-legally binding "policy document" establishing that all foreigners in detention are "entitled to free state medical care and services"[7]. As it is the case with the provisions specifically applying to asylum seekers, it is informally interpreted as access free of charge to the standard health care coverage in Malta (preventive, investigative, curative, and rehabilitative services). This results in applying to all undocumented migrants and asylum seekers who are systematically placed in closed centres when they arrive to Malta. The policy document does not refer to the rights to access health care for undocumented migrants who are in open centres (ordinary residence place when they are released from closed centres[8]) or other accommodation facilities, but it only mentions that the centre shall maintain regular contact with public authorities regarding health issues in general and in case of suspected infection conditions[9].

When asylum seekers and undocumented migrants seek health care, they are normally requested to show their "police number" if they are in detention or their "ID card" if they have been released. The "police number" is an immigration number given upon arrival. The "ID card" looks like a Maltese ID card but it is delivered for registration purposes, there are no rights attached to it and it constitutes a proof that the person has not escaped from the detention centre.

This clearly shows that there is a lack of legislative framework in Malta. Given this fact, there is a high resort to arbitrary decisions and informal strategies.

7. Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity, *Irregular Immigrants, Refugees and Integration – Policy Document*, 2005, p. 12.

8. Those undocumented migrants who are rejected asylum seekers are released after eighteen months of detention and placed in an open centre.

9. Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity, *Policy Document*, p. 24.

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

- To be affiliated or beneficiary of social security and show and identity card or social security number of the last pay-slip (thus pay social security contributions, except if dependent, unemployed or retired).

ASYLUM SEEKERS

Entitlements:

Access to “state medical care and services”.

Conditions:

- In practice normally requested to show the “police number” if they are in detention or the “ID card” if they have been released; and
- To pay or co-pay if sufficient resources (no applicability).

UNDOCUMENTED MIGRANTS

Entitlements:

Access not provided by a legal or administrative provision.
Non-legally binding policy document: Access free of charge as beneficiary of “free state medical care and services”.

Conditions:

- In practice normally requested to show the “police number” if they are in detention or the “ID card” if they have been released.

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

- To be affiliated or beneficiary of social security and show an identity card or social security number of the last pay-slip (thus pay social security contributions, except if dependent, unemployed or retired).
- Previous authorisation by general practitioners to access secondary care.

ASYLUM SEEKERS

Entitlements:
Access to “state medical care and services”.

Conditions:
- In practice normally requested to show the “police number” if they are in detention or the “ID card” if they have been released; and
- To pay or co-pay if sufficient resources (no applicability).

UNDOCUMENTED MIGRANTS

Entitlements:
Access not provided by a legal or administrative provision.
Non-legally binding policy document: Access free of charge as beneficiary of “free state medical care and services”.

Conditions:
- In practice normally requested to show the “police number” if they are in detention or the “ID card” if they have been released.

HOSPITALISATION (INPATIENT CARE)

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
- To be affiliated or beneficiary of social security and show and identity card or social security number of the last pay-slip (thus pay social security contributions, except if dependent, unemployed or retired).

ASYLUM SEEKERS

Entitlements:
Access to “state medical care and services”.

Conditions:
- In practice normally requested to show the “police number” if they are in detention or the “ID card” if they have been released; and
- To pay or co-pay if sufficient resources (no applicability).

UNDOCUMENTED MIGRANTS

Entitlements:
Access not provided by a legal or administrative provision.
Non-legally binding policy document: Access to “free state medical care and services”.

Conditions:
- In practice normally requested to show the “police number” if they are in detention or the “ID card” if they have been released.

ANTE AND POST NATAL CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

- To be affiliated or beneficiary of social security and show and identity card or social security number of the last pay-slip (thus pay social security contributions, except if dependent, unemployed or retired).

ASYLUM SEEKERS

Entitlements:

Access to "state medical care and services"[10].

Conditions:

- In practice normally requested to show the "police number" if they are in detention or the "ID card" if they have been released; and
- To pay or co-pay if sufficient resources (no applicability).

UNDOCUMENTED MIGRANTS

Entitlements:

Access not provided by a legal or administrative provision.
Non-legally binding policy document: Access to "free state medical care and services"[11].

Conditions:

- In practice normally requested to show the "police number" if they are in detention or the "ID card" if they have been released.

10. According to Article 14(1) of *the Subsidiary Legislation 420.06*, "*in the implementation of the provisions related to health care, account shall be taken on the specific situation of vulnerable persons which shall include, minors, unaccompanied minors and pregnant women, found to have special needs after an individual evaluation of their situation*". However, this provision is not further developed to allow concrete implementation.

11. The Policy Document establishes that "*the management and operation of open centres hosting pregnant women need to acknowledge their specific needs and different characteristics and address such differences*" as well as "*promote and safeguard their health*" in cooperation with the competent authority. See Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity, *Policy Document*, p. 25.

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge or fully paid depending on the category of medicines. Holders of special cards have access free of charge to all medicines listed in the Government Formulary ("pink card") or on their card ("yellow card" and "tuberculosis, leprosy and poliomyelitis cards").

Conditions:

Three different situations:

- For people in general:
  - To be affiliated or beneficiary of social security and thus pay social security contributions (except if dependent, unemployed or retired);
  - To show the prescription; and
  - To pay full cost for some medicines (e.g.antibiotics).
- For "pink card holders":
  - To be affiliated or beneficiary of social security and thus pay social security contributions (except if dependent, unemployed or retired);
  - To prove low income; and
  - To show the "pink card".
- For "yellow card holders" and people with tuberculosis, leprosy and poliomyelitis:
  - To be affiliated or beneficiary of social security and thus pay social security contributions (except if dependent, unemployed or retired); and
  - To show the "yellow card" or "tuberculosis card".

ASYLUM SEEKERS

Entitlements:

Access to "state medical care and services".

Conditions:

- In practice normally requested to show the "police number" if they are in detention or the "ID card" if they have been released; and
- To pay or co-pay if sufficient resources (no applicability).

UNDOCUMENTED MIGRANTS

Entitlements:

Access not provided by a legal or administrative provision.
Non-legally binding policy document: Access to "free state medical care and services".

Conditions:

- In practice normally requested to show the "police number" if they are in detention or the "ID card" if they have been released.

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access anonymous and free of charge.

Conditions:

No particulars conditions required.

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
- To be affiliated or beneficiary of social security and show and identity card or social security number of the last pay-slip (thus pay social security contributions, except if dependent, unemployed or retired).

ASYLUM SEEKERS

Entitlements:
Access to “state medical care and services”.

Conditions:
- In practice normally requested to show the “police number” if they are in detention or the “ID card” if they have been released; and
- To pay or co-pay if sufficient resources (no applicability).

UNDOCUMENTED MIGRANTS

Entitlements:
Access not provided by a legal or administrative provision.
Non-legally binding policy document: Access to “free state medical care and services”.

Conditions:
- In practice normally requested to show the “police number” if they are in detention or the “ID card” if they have been released.

TREATMENT OF OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
- To be affiliated or beneficiary of social security and show and identity card or social security number of the last pay-slip (thus pay social security contributions, except if dependent, unemployed or retired).

ASYLUM SEEKERS

Entitlements:

Access to "state medical care and services".

Conditions:

- In practice normally requested to show the "police number" if they are in detention or the "ID card" if they have been released; and
- To pay or co-pay if sufficient resources (no applicability).

UNDOCUMENTED MIGRANTS

Entitlements:

Access not provided by a legal or administrative provision.
Non-legally binding policy document: Access o "free state medical care and services".

Conditions:

- In practice normally requested to show the "police number" if they are in detention or the "ID card" if they have been released.

CHILDREN

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge under the same conditions of their parents.
There are compulsory and recommended vaccinations[12].

Conditions:

- To be beneficiary of social security contributors and show and identity card or social security number of their parents' last pay-slip; and
- To show "pink" or "yellow card" if low income or specific chronic diseases.

ASYLUM SEEKERS' CHILDREN

Entitlements:

Access to "state medical care and services".

Conditions:

- In practice normally requested to show the "police number" (immigration number given upon arrival) if they are in detention or the "ID card" if they have been released; and
- To pay or co-pay if sufficient resources (no applicability).

UNACCOMPANIED ASYLUM SEEKING CHILDREN

Entitlements:

All children under the age of 18 in need of care are allowed to apply for asylum and place under state custody[13]. Access to "state medical care and services".

12. For the list of vaccinations, see www.euvac.net/graphics/euvac/vaccination/malta.html

13. They shall also be assisted in terms of the Children and Young Persons (Care Orders) Act under the same conditions of Maltese children. See Article 13(3) of the *Refugees Act*. In addition, the specific situation of all minors and accompanied minors shall be taken into account after an individual evaluation of their situation (see Article 14(1) of the *Subsidiary Legislation 420.06*).

Non-legally binding policy document: Same treatment as nationals[14].

Conditions:

- In practice normally requested to show the "police number" (immigration number given upon arrival) if they are in detention or the "ID card" if they have been released; and
- To pay or co-pay if sufficient resources (no applicability).

CHILDREN OF UNDOCUMENTED MIGRANTS

Entitlements:

Access to "state medical care and services". All children under the age of 18 in need of care are allowed to apply for asylum.

Conditions:

- In practice normally requested to show the "police number" (immigration number given upon arrival) if they are in detention or the "ID card" if they have been released.

UNACCOMPANIED (MIGRANT) CHILDREN

Entitlements:

Access to "state medical care and services". All children under the age of 18 in need of care are allowed to apply for asylum and place under state custody.

Non-legally binding policy document: Same treatment as nationals.

Conditions:

- In practice normally requested to show the "police number" (immigration number given upon arrival) if they are in detention or the "ID card" if they have been released.

DETENTION CENTRES

ADULTS

"State medical care and services" for asylum seekers although this protection could be diminished in exceptional circumstances[15].

Non-legally binding policy document: all foreigners in detention (asylum seekers and undocumented migrants) are entitled to "free state medical care and services".

CHILDREN

Unaccompanied children cannot be confined in detention centres but placed in centres for minors.

Accompanied children: same access than adults.

14. Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity, *Policy Document*, p. 13.

15. Article 12(6) of the *Subsidiary Legislation 420.06*.

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status: No legal provision requires or prohibits public officials to report or denounce the presence or data about undocumented migrants to any immigration authorities.

NON EXPULSION FOR MEDICAL REASONS

NO RESORT TO EXPULSION SANCTIONS OR SUSPENSION OF REFUSAL-OF-ENTRY OR EXPULSION ORDERS:

"Any person" (thus undocumented migrants are included) in need of immediate medical or surgical treatment which cannot be deferred without prejudice to their health, can get a leave to land and remain in Malta[16].

CONDITIONS:

- Two medical practitioners (one of them a government medical officer) must certify that in need of immediate medical or surgical treatment which cannot be deferred without prejudice to their health. Competent authority: the "Principal Immigration Officer" who, according to the law, "shall not refuse leave to land and remain in Malta".

DURATION:

Until the seventh day after a medical certificate (by a government medical officer) to the effect that there is no longer any necessity that such person should remain in Malta for the purpose of or in connections with such treatment.

RESIDENCE PERMIT FOR MEDICAL REASONS:

No legal provisions, however in practice, the "Refugee commissioner" could grant a "temporary protection on humanitarian grounds".

16. Article 6(4) Chapter 217 of the *Immigration Act of* 21 September 1970.

IN PRACTICE

THE VISION OF THE HAM GROUP OF SKOP REGARDING THE SITUATION IN PRACTICE

All the migrants and asylum seekers in Malta are detained systematically when they arrive on the Island. The length of detention depends on their status. When they claim asylum, they are released once their claim has been accepted or after one year if their case is still pending. When they do not claim asylum or it is rejected, they stay in detention for one year and a half. After that everyone is released and sent to open centres regardless their status.

This situation must be particularly taken into account as long as the long-term detention has a strong impact on the health status of the migrants and asylum seekers, physically and psychologically.

Children of asylum seekers and of rejected asylum seekers are in the same situation as their parents. The main difference is that children are considered 'vulnerable persons' and therefore they should be released earlier from the detention centres according to the policy in force. However in practice it takes several months before they are released, together with their parents.

Access to health care for undocumented migrants and asylum seekers in detention centres:

In theory and according to non-legally binding documents, access to health care in the Maltese detention centres should be "free state medical care and services." In practice, asylum seekers and undocumented migrants do not have adequate access to health care.

Access to health care is very insufficient. Asylum seekers and undocumented migrants encounter problems when they need to see a general practitioner. There are only two general practitioners working 4 hours a day from Monday to Friday in the three detention centres of Malta, where at the moment 2500 migrants are living. Moreover, the general practitioners do not enter the rooms. They have a small clinic at the entrance of the rooms, so if someone is sick and cannot move, he will not be able to see the doctor.

There are also problems of coordination between the hospital and the detention centres. It often happens that when a detainee has an appointment at the hospital, the soldiers do not inform this person, and if the soldier cannot find him/her when he comes to pick him/her up, the appointment is lost. Appointments are also lost when there is an emergency in the detention centre. In addition, when the patient manages to go to the hospital, the medical file is not given directly to the patient or to the general practitioner but to the soldier, who sometimes loses it. In fact,

migrants who are released from detention are given their medical file, but the hospital cannot use it as the software for recording patient information is not designed for those who are detained. This creates situations where patients have different files within the hospital.

There are also problems related to contagious diseases. Individuals suffering from contagious diseases (chicken pox, scabies, tuberculosis) are not isolated from others in the detention centre "Safi Barracks". In "Lyster Barracks", when detainees have an infectious disease, they are put in small cells without toilets, without windows, and with waste water flooding on the floor. In regard to tuberculosis, all undocumented migrants and asylum seekers are screened when they enter detention and before they leave. However, it usually lasts more than a month between the screening and the treatment. Sometimes, when there is not enough space at the hospital, migrants suffering from tuberculosis are sent back to detention, living with the other detainees, where there is no proper follow-up.

The detention conditions have a very negative impact on detainees' health. There are no adequate shelters and there is a lack of hygiene. The centres are overcrowded and in a dire condition. In addition, the detainees do not have regular access to the open air.

The appalling living conditions of undocumented migrants and asylum seekers in the Maltese detention centres have been strongly denounced by the humanitarian organisation Médecins sans Frontières in its last report "Not Criminals"[17]. The report highlights the negative impact of detention conditions on health and the fact that the most frequent health problems were related to the conditions of the journey. It lists the unacceptable barriers in accessing health care: lack of medical staff, lack of medical equipment, no translation services, no access to medicines because it depends on the soldiers to deliver them, etc.

The report also lists the urgent measures to be taken regarding access to health care: i) a reception centre should be set up where all new arrivals are assessed, screened and treated before they are moved to the detention areas; ii) the number of doctors and nurses available inside the detention centres, as well as the consultation hours, should be enough to provide adequate care to the detainees present in the centres at any given time; iii) all medical activities should be performed exclusively by health care professionals and supervised by the National Health system through medical protocols and official guidelines; iv) medical services should be provided with a cultural mediator; v) medical personnel must have regular access inside the living quarters to guarantee that the most sick and vulnerable have access to medical consultation; vi) every patient should have a medical file which is updated at every consultation;

17. Médecins sans Frontières, *Not Criminals. Médecins sans Frontières exposes conditions for undocumented migrants and asylum seekers in Maltese detention centres,* April 2009.

vii) detained persons who are admitted to external health care facilities should, at all times, be treated equally as other patients in terms of space, movement, possibility of receiving visitors etc.; viii) a pharmacy, staffed by a pharmacist, should be set up in the centres to guarantee that prescriptions are dispensed directly and without delays to the patients".

Access to health care for undocumented migrants and asylum seekers in open centres

In Malta, individuals who have gone through the asylum process and whose asylum application has definitely been rejected do not become 'undocumented migrants" in the strict sense of the term. In many cases it is not possible for the government to deport these people back to their country, they are given a temporary ID card during their stay in Malta. This card does not have any rights attached, but it is only delivered for registration purposes. Most of these immigrants are accommodated in open centres.

In practice, it seems that these people have free access to primary health care, namely to hospitals and health centres. They can also receive free medication.

In its 2007 report[18], Médecins du Monde set up open clinics in open centres in Malta from April to September 2007. One of its conclusions was that "*the pattern of distribution of most prevalent pathologies among the consulted patients is certainly linked to the continuum of precarious living conditions and psychosocial stressors*". In addition, Médecins du Monde conducted a survey among asylum seekers and undocumented migrants living in open centres. The survey showed that the main problem in accessing health care was related to access to free treatment and specialist consultation (secondary health care). Moreover, doctors, pharmacists, and asylum seekers themselves were not completely aware of the entitlement to free medicines. Therefore undocumented migrants keep paying for treatment in many cases. Regarding access to mental health care, a considerable amount of people were suffering from diverse symptoms regarding their psychosocial health due to the length and the conditions of detention and only a very small fraction has access to treatment.

Finally, when accessing health care, migrants often experience cultural and language barriers. Those who do not have knowledge of the Maltese or English language find it very difficult to communicate with the doctors and nurses. Currently, cultural mediation and language translation is being offered on specific days by Médecins Sans Frontières at the main hospital and at one of the health centres. There have also been cases where migrants from Africa faced an attitude of hostility from the staff working in hospitals and health centres.

HAM GROUP of SKOP

18. Médecins du Monde, «*Everybody just tries to get rid of us*». Access to health care and Human rights of asylum seekers in Malta. Experiences, results and recommendations, 2007.

NETHERLANDS

HEALTH SYSTEM

An insurance-based health system operated by private health insurance companies. Some limiting conditions have been established by the government in order to guarantee that health care is affordable for all, including individuals with a precarious economic situation or with elevated care expenses.

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

Nationals and authorised residents in the Netherlands are obliged to procure health insurance covering a "basic package" of health care[1]. They pay a fixed amount every month and the insurer will reimburse the cost of the health care needed. Insurance companies cannot deny this insurance to anyone living in their area of activity. The premium for the basic package is publicly determined (90-110 € a month). Children up to the age of 18 do not pay anything and people who cannot pay the full standard premium can apply for a public allowance. Employees and people receiving benefits also pay an income-related contribution in addition to the premium.

The content of the standard package is determined by law and it is comprised of practically all elemental health services: i) primary and secondary care; ii) hospitalisation; iii) dental care for children below 22; iv) specialised dental care and dentures; v) medical appliances; vi) a wide category of medicines; vii) maternity care and obstetrics; viii) medical transport (ambulances or wheelchair taxis); ix) access (limited) to physiotherapy, remedial, speech and occupational therapy; and x) counselling on nutrition and diet.

For further health coverage not included in the standard package, patients are free to take out additional insurance. The premium of this extra package is freely established by private insurers who are entitled to pursue profits[2].
This system does not however apply to **asylum seekers**[3]. They cannot get the regular health insurance but instead they benefit from the Regulation on Provisions to Asylum Seekers[4]. Their health care expenses are covered by the Central Agency for the Reception of Asylum Seekers

1. Only a very small percentage of Dutch people are uninsured (homeless, persons with mental health problems…). These persons have to pay the full cost of medical services.

2. See the new Health Insurance Act, "*Zorgverzekeringswet*" of 16 June 2005.

3. They are subject to medical examination upon arrival.

4. *Regeling verstrekkingen* asielzoekers (RVA 2005).

(*COA*) through the insurer Menzis. Menzis is a non-profit insurance company recently contracted by the *COA* and is in charge of the provision of all health care other than care needed in case there is a risk for public health (provided by the local public health service - *GGD*[5]). Through this system, asylum seekers are entitled to access free of charge all types of health care, except in vitro fertilisation, gender reassignment surgery, and some types of aesthetic surgery.

Undocumented migrants are excluded from health insurance since 1998. Within a context of increased immigration control measures, the "Linkage Act"[6] linked the right to social services (including eligibility for the public insurance system) to administrative status. Since then, they are only entitled to "care that is medically necessary" and care needed in situations that would jeopardize public health[7]. The meaning of the term "medically necessary care" has often been subject to discussions at political and medical professional levels. In 2007, an independent commission[8] recommended the Ministry of Health to define the concept as "responsible and appropriate medical care which (…) is effective and targeted, given in a patient-oriented manner and fine-tuned to the patient/s actual needs". Despite this, there are still many different interpretations by health care providers since, according to the law, they are the ones determining on a case by cases basis what is considered to be "care that is medically necessary" taking into account the type of assistance needed and the expected patient's residence in the country[9].

Thus, a wide range of services provided by individual health care providers and hospitals, including HIV/AIDS treatment is available – at least potentially – for undocumented migrants. In principle, they will have to pay the full cost of the services unless they cannot pay. They are asked to pay straight away in cash, otherwise they receive a bill (and reminders) at home, they are proposed to sign for payment by instalments and they even receive a visit from private officials contracted by health care providers ("incasso offices") trying to get the money directly on the spot. Only if there is enough evidence that they cannot pay, individual health care providers, hospitals and pharmacies are entitled to partial or total reimbursement of these costs. Since the reform of 2009[10], the reimbursement percentage depends on the type of care, e.g. general practitioners can only get 80% and midwives 100%. Hospitals and pharmacies can only get reimbursed if they have a special contract with the CVZ (Health Care Insurance Board)[11] to provide services to undocumented migrants. The rate depends on the terms of the specific contract.

5. *Gemeentelijke Gezondheidsdienst – GGD.*

6. *Koppelingswet* 1998. Before this act was passed, undocumented migrants had access to the public insurance system.

7. Article 10 of the *Vreemdelingenwet* of 23 November 2000.

8. "Doctor and Alien", *Report of the Commission Medical Care for (imminent) failed asylum seekers and illegal aliens,* December 2007, KNMG, LHV, NVvP, Order of Medical Specialists, Pharos.

9. See Article 122a of *the Zorgverzekeringswet.*

10. See the Amendment no. 31249 of the *Zorgverzekeringswet*, known as "Financial Regulation" of 21 November 2008. This amendment inserts Article 122a that replaces the former funding scheme consisting of two different systems: "Koppelingsfonds" (fund to compensate general practitioner, midwives, pharmacists and dentists) and the system of "dubious debtor" (for hospitals, rehabilitative centres and ambulance services). According to Article 122a(4) of the Health Insurance Law, the reimbursement rate applying to midwives is 100% and 80% to other first line health care providers (general practitioners). For hospitals (providing emergency case as well as inpatient and outpatient care) and pharmacies, the CVZ makes a call for tenders and choose hospitals-pharmacies-centres offering the more competitive reimbursement rates. The third line care (mental care, elderly care, revalidation…) can start a contract with CVZ from the moment they have an undocumented patient using their services. These percentages normally range between 80-100%.

11. The *CVZ* is a public body in charge of guaranteeing that health care is accessible and affordable in the Netherlands and to this aim, it monitors the behaviour of insurance companies.

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access paid by the health insurance company under the "standard package".

Conditions:

- To have a health insurance ("standard package") and show the insurance pass and ID (thus pay the premium unless they have low income or no resources. In this case, they can apply for the public care allowance).

ASYLUM SEEKERS

Entitlements:

Access free of charge, paid with public funds inside asylum centres and outside if needed.

Conditions:

- To show the "insurance card" from agreed insurer to prove entitlements if care is provided outside the asylum centre.

UNDOCUMENTED MIGRANTS

Entitlements:

No access free of charge unless they cannot pay and care is considered "medically necessary".

Conditions:

- The doctor has to consider the care requested as "medically necessary". All hospitals can ask for reimbursement of 80% of the irrecoverable costs.

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access paid by the health insurance company under the "standard package".

Conditions:

- To have a health insurance ("standard package") and show the insurance pass and ID (thus pay the premium unless they have low income or no resources. In this case, they can apply for the public care allowance); and
- Previous authorisation by the general practitioner to access secondary care (provided only in outpatient clinics of hospitals).

ASYLUM SEEKERS

Entitlements:
Access free of charge.

Conditions:
- To show the "insurance card" from agreed insurer to prove entitlements if care is provided outside the asylum centre.

UNDOCUMENTED MIGRANTS

Entitlements:
No access free of charge unless they cannot pay and care is considered "medically necessary".

Conditions:
- The doctor has to consider the care requested as "medically necessary". The doctor can ask for reimbursement of 80% of the irrecoverable costs.

HOSPITALISATION (INPATIENT CARE)

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access paid by the health insurance company under the "standard package".

Conditions:
- To have health insurance ("standard package") and show the insurance pass and ID (thus pay the premium unless they have low income or no resources. In this case, they can apply for the public care allowance).

ASYLUM SEEKERS

Entitlements:
Access free of charge.

Conditions:
- To show the "insurance card" from agreed insurer to prove entitlements if care is provided outside the asylum centre.

UNDOCUMENTED MIGRANTS

Entitlements:
No access free of charge unless they cannot pay and care is considered "medically necessary".

Conditions:
- The doctor has to consider the care requested as "medically necessary". Only contracted hospitals can ask from 80% to 100% reimbursement depending on rate agreed on the contract with the CVZ.

ANTE AND POST NATAL CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access paid by the health insurance company under the "standard package".

Conditions:

- To have health insurance ("standard package") and show the insurance pass and ID (thus pay the premium unless they have low income or no resources. In this case, they can apply for the public care allowance).

ASYLUM SEEKERS

Entitlements:

Access free of charge.

Conditions:

- To show the "insurance card" from agreed insurer to prove entitlements if care is provided outside the asylum centre.

UNDOCUMENTED MIGRANTS

Entitlements:

No access free of charge unless they cannot pay and care is considered "medically necessary". In practice, it is always considered "medically necessary".

Conditions:

- The doctor has to consider the care requested as "medically necessary". Midwives and hospitals where they give birth can ask for reimbursement of 100% of the cost.

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access paid by the health insurance company under the "standard package" (wide range of medicines). The rest is only covered if a supplementary insurance package has been taken out[12].

12. For instance, homeopathic medicines or very specific and expensive drugs.

Conditions:

- To have health insurance ("standard package") and show the insurance pass and ID (thus pay the premium unless they have low income or no resources. In this case, they can apply for the public care allowance).

ASYLUM SEEKERS

Entitlements:

Access free of charge to a wide range of medicines.

Conditions:

To show the "insurance card" from agreed insurer to prove entitlements if care is provided outside the asylum centre.

UNDOCUMENTED MIGRANTS

Entitlements:

No access free of charge unless they cannot pay and care is considered "medically necessary".

Conditions:

- The doctor has to consider the medicines required as "medically necessary".
- If they can pay, they are requested to pay the full cost.

Pharmacies can ask from 80% to 100% reimbursement depending on rate agreed on the contract with the *CVZ*.

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Screening free of charge and anonymous only in local public health services (GGD) or Sexual Transmitted Diseases clinics. Otherwise, screening paid by the health insurance company under the "standard package".

Conditions:

No particular conditions required.

ASYLUM SEEKERS

Entitlements:

If living in public reception centres: Screening free of charge and anonymous.

If not living in public reception centres: Screening free of charge and anonymous only in local public health services (*GGD*) or Sexual Transmitted Diseases clinics.

Conditions:

No particular conditions required.

UNDOCUMENTED MIGRANTS

Entitlements:
Screening free of charge and anonymous ONLY in local public health services (*GGD*) or Sexual Transmitted Diseases clinics

Conditions:
No particular conditions required.

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access paid by the health insurance company under the "standard package".

Conditions:
- To have health insurance ("standard package") and show the insurance pass and ID (thus pay the premium unless they have low income or no resources. In this case, they can apply for the public care allowance).

ASYLUM SEEKERS

Entitlements:
Access free of charge.

Conditions:
- To show the "insurance card" from agreed insurer to prove entitlements if care is provided outside the asylum centre.

UNDOCUMENTED MIGRANTS

Entitlements:
NO access free of charge unless they cannot pay and care is considered "medically necessary". In practice, it is always considered "medically necessary".

Conditions:
- The doctor has to consider the medicines required as "medically necessary". Hospitals can ask from 95% to 100% reimbursement depending on rate agreed on the contract with the *CVZ*.

TREATMENT OF OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access paid by the health insurance company under the "standard package".

Conditions:
- To have a health insurance ("standard package") and show the insurance pass and ID (thus pay the premium unless they have low income or no resources. In this case, they can apply for the public care allowance).

ASYLUM SEEKERS

Entitlements:

Access free of charge including tuberculosis treatment.

Conditions:

➤ To show the "insurance card" from agreed insurer to prove entitlements if care is provided outside the asylum centre.

UNDOCUMENTED MIGRANTS

Entitlements:

No access free of charge unless they cannot pay and care is considered "medically necessary". In practice, it is always considered "medically necessary".

Conditions:

➤ The doctor has to consider the medicines required as "medically necessary". Hospitals can ask from 80% to 100% reimbursement depending on rate agreed upon in the contract with the CVZ, except in case of tuberculosis where the full cost of treatment is covered by the "Regulation on Provisions to Asylum Seekers (RVA)".

CHILDREN

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access to all types of health care free of charge until the age of 18. Vaccination is not compulsory and free of charge.

Conditions:

➤ To be registered on their parents' insurance card although they are covered with public funds.

ASYLUM SEEKERS' CHILDREN

Entitlements:

Same as nationals.

Conditions:

No particular conditions required.

UNACCOMPANIED ASYLUM SEEKING CHILDREN

Entitlements:

Same as nationals.

Conditions:

No particular conditions required.

UNACCOMPANIED (MIGRANT) CHILDREN

Entitlements:

No access free of charge unless their parents cannot pay and care is considered "medically necessary".
Vaccination is not compulsory and free of charge.

Conditions:

➤ The doctor has to consider the care requested as "medically necessary".

The doctor/hospital can ask for reimbursement (rate depending on the type of care and contracts).

CHILDREN OF UNDOCUMENTED MIGRANTS

Entitlements:

No access free of charge unless care is considered "medically necessary".
Vaccination is not compulsory and free of charge.

Conditions:

➤ The doctor has to consider the care requested as "medically necessary".

The doctor/hospital can ask for reimbursement (rate depending on the type of care and contracts).

DETENTION CENTRES

ADULTS

No specific legal provisions on access to health care inside detention centres.

CHILDREN

No specific legal provisions on access to health care inside detention centres.
They can be retained in detention centres.

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status: Besides the obligation to inform public health authorities in cases of compulsory notification diseases, health care providers can report to the police in cases of suspicions of child abuse or other criminal offences when the patient is in acute danger. There are no other legal provisions that require health care providers and health administrations to transfer information about administrative status to immigration authorities.

NON EXPULSION FOR MEDICAL REASONS

NO RESORT TO EXPULSION SANCTIONS OR SUSPENSION OF REFUSAL TO ENTRY OR EXPULSION ORDERS: "THE ARTICLE 64 APPLICATION"

WHO ?

Expulsion could be suspended as long as undocumented migrants' (them or their family members) state of health would make it inadvisable for them to travel[13]. It is not a residence permit as such.

CONDITIONS:

- State of health would make it inadvisable for them (applicants or family members) to travel.
- The termination of the medical treatment will lead to a "*medical emergency". According to the applying norm, medical emergency is "a situation in which the person involved is suffering from a disorder which current medical scientific opinion shows that, when treatment does not take place, it will on a short term lead to death, disability or another form of serious psychological or physical damage*". "Short term" can be interpreted as three months. Although this is determined on a case by case basis, practice shows that, this generally applies in the case of pregnancy (six weeks before and after delivery), severe psychological illnesses and several medical treatments like tuberculosis.
- The medical emergency must last less than one year.
- Competent authority: IND (Immigration and Naturalisation Service). The application must contain medical information about the treatment and the consequences of cessing it. The State Medical Service (*Bureau Medische Advisering, BMA*) will determine whether the applicant is unable to travel due to medical situation, whether the cessation of treatment will lead to a medical emergency and whether the treatment is expected to last less than a year. The *BMA* can contract the treating doctor and request a medical examination of the applicant.

DURATION:

The "article 64 application" entitles to legally remain in the Netherlands for a period depending on the illness/treatment. It is usually granted for six months with a possibility of one renewal. It never becomes permanent.

ACCESS TO HEALTH CARE:

They get the same insurance than asylum seekers arranged by COA[14].

13. See Article 64 of the *Vreemdelingenwet*.

14. They are however not offered to live in the reception centres.

RESIDENCE PERMIT FOR MEDICAL REASONS: "PERMIT FOR MEDICAL EMERGENCY"

WHO?

Severely ill undocumented migrants

CONDITIONS[15]

- The termination of the medical treatment will lead to a "medical emergency" (risk of death, disability or another form of serious psychological or physical damage if not treated in three months)[16].
- The medical emergency must last for a year or longer (if not, Article 64 will apply).
- To have a "Provisional Residence Permit" required to enter the Netherlands unless the applicant's "state of health is such that it would be inadvisable for him to travel"[17].
- To have a valid passport unless (cumulative conditions): i) it is proven that the only possibility to get a valid passport is to return to the country of origin; ii) the termination of the medical treatment will lead to a medical emergency; iii) the Netherlands is the most appropriate country for the treatment; and iv) the medical emergency will last for a year or longer (if not, Article 64 will apply).
- To be subjected to a medical examination in the interest of public health.
- Competent authority: IND (Immigration and Naturalisation Service). The application also has to be submitted together with an authorisation to extract medical information from the patient and a declaration signed by the applicant's doctor(s) about the medical situation of the patient. These documents must be dated in the last month. The State Medical Service (*Bureau Medische Advisering, BMA*) will issue an opinion determining whether there is a medical emergency, whether the applicant is unable to travel due to this emergency, and whether the country of origin offers the medical treatment (no mention to effective access)[18].

DURATION:

One year. Possibility of renewal one more year if the conditions are fulfilled after another evaluation[19].

ACCESS TO HEALTH CARE:

As authorised residents, they are eligible for insurance as Dutch citizens

15. See Article 16 of the *Vreemdelingenwet* (for conditions applying to all regular temporary permits) and B/R 3.2 of the *Vreemdelingencirculaire.*

16. See B/8 3.1 of the *Vreemdelingencirculaire*.

17. In practice, these types of patients cannot travel. See Article 17(1)(c) of the *Vreemdelingenwet*. Other possibilities to be exempted from this requirement include victims of *witnesses of trafficking*.

18. This information is normally obtained through International SOS.

19. See Article 3.57 of the *Vreemdelingenbesluit* of 2000.

IN PRACTICE

THE VISION OF MDM THE NETHERLANDS ABOUT THE SITUATION IN PRACTICE

Access to health care for undocumented migrants – adults:

Since 1998, undocumented migrants are excluded from social security, including health insurance; however, they do have the right to medically necessary health care. The government has issued a regulation which facilitates reimbursements to health professionals for the treatment of undocumented migrants who are not able to settle their bills. After a reform of the health insurance law in 2006, this amendment came into force in January 2009.

Despite the existing regulations, many undocumented migrants are not acquainted with the Dutch health care system and are unaware of their legal right to "medically necessary care". The fear exists that seeking medical care would attract the attention of police or the immigration office (*Immigratie - en Naturalisatie Dienst, IND*) or that caregivers would pass on personal information of patients in these institutions.

One of our biggest concerns is whether the implementation of the new funding scheme (executed by *College Voor Zorgverzekeringen, CVZ*) has effectively reached the health professionals. It turns out that various individual caregivers as well as institutions still are not aware of the regulation, and therefore undocumented migrants run the risk of being refused by these aforementioned caregivers.

In contrast with the previous fund ("*Koppenlingsfonds*"), secondary and tertiary health care can now also be reimbursed. *CVZ* selected and contracted several pharmacies and hospitals throughout the country that are able to receive reimbursements for the health care provided to undocumented migrants. Therefore, an additional barrier for some undocumented migrants is the increased distance to the contracted centres. While the contracted hospitals have adjusted their internal administrative procedures, the practical barriers to access health care seem to remain (partially) in office. Patients still report they are scared off because the hospital demanded payment in advance and, in some cases, denied the access to treatment.

However, recent cases show that lack of information and lack of funds, and therefore fear to seek healthcare, remain to be the major barriers to access "medically necessary health care". To be reimbursed by *CVZ*,

health professionals (or institutions) have to provide evidence of their efforts to claim the indebted amount from the patient. The conditions include a bill sent to the patient's home address (as it is known by the institution), followed by a reminder of the bill. If the patient is unable to settle the bills, the receiver is required to assign a debt collection agency for further investigation of the economic resources of the patient. Some institutions have claimed to skip the latter practice in order to save time and money, since it is unlikely in most cases that the patient will be able to pay the debt. However, because of the recent implementation of the new funding scheme there is little information available about the actual effects of these practices for undocumented migrants.
With the implementation of the new funding scheme, the reimbursement for primary health care was reduced (from 100%) to a maximum of 80% of the total costs. This has increased the financial barrier to access general practitioners' and diagnostic centres. Dental care for adults over 21 years is excluded from any reimbursement. Cases were reported in which patients who needed primary dental care were referred to secondary dental care, after being denied health care by a dentist. But many patients did not get this opportunity and remained with dental problems. Several private initiatives have been set up since January 2009 to provide funds for (emergency) dental care and to organize dentists who are willing to treat undocumented patients according to the tariffs for primary health care established by *CVZ*. Also psychotherapeutical care has become far less accessible since January 2009.

Owing to a political lobby supported by the midwives association and several NGOs, the government agreed with a full reimbursement for obstetrical and pregnancy-related care. However, practicing midwives have incidentally reported to be unaware of the regulations concerning health care for undocumented migrants.

Access to health care for asylum seekers - adult:

Since January 2009, the structure of medical care at Dutch asylum centres has changed. The new structure appeals to the independence of asylum seekers regarding health care seeking behaviour. The provision of medical services at the centres (the frequency of which differs per centre) have decreased and are replaced by contracted general practitioners in the same area. A telephone number should be provided and assist patients to make an appointment with a general practitioner at any time (24/7). However, problems with this system are identified such as language barriers, the fact that many people are unfamiliar with the system (e.g. patients tend to forget or misunderstand their appointments), and there is an inadequate education about the utilization of the telephone system.

People who do not reside at the asylum centres encounter problems with the long distance to a contracted general practitioner (many asylum seeker centres

are located in relatively remote areas). There are long waiting lists for mental health care; however, this problem is not related to the status as asylum seeker as it also applies to Dutch residents.

Access to health care for undocumented migrants - children:

Officially, the only difference between children and adult undocumented migrants is the financial reimbursement (up to 80%) for dental care for children under 22. While the majority of the reported barriers with accessing health care concern adults, there is evidence that undocumented children face the same problems.
The lack of information about access to specialised health care for undocumented children is a barrier to obtain adequate and professional health care. A specific issue of concern is the access to special education (which contains elements of treatment for psychiatric problems, physical and/or mental handicaps), which was only accessible after a legal procedure in some cases.

Access to health care for asylum seekers - children:

An issue of concern by several NGO's focused on the well-being of children in the Netherlands is the quality and continuity of social and mental support for children and their parents by the Youth Health Care (*Jeugdgezondheidszorg, JGZ*). It is questioned whether *JGZ* is able to meet the needs of children who are living under the specific circumstances of an asylum seeker centre. Another question addresses the transfer of children to different regions within the country, which interrupts the continuity of structural social or mental health care.

Access to health care in detention centres:

During detention, people have access to health care. However, the quality of these services has often been questioned, and in general it is unseen by the outside world. Detainees can access medical services through a written request which is passed on by security personnel, who sometimes wait too long before acting properly. There is no freedom of choice between medical doctors, who can only be accessed after referral by a nurse. In practice, it seems that some forms of health care (e.g. dental care, prosthesis and extramural care) are postponed during the detention period. Patients often complain that they received paracetamol instead of adequate medication. Mental health care proves to be a very complicated issue since the problems are often related to the detention itself. In addition, many detainees do not trust the psychologists who work in the detention centers. There is no prior medical examination which can indicate that patients' medical conditions allow them to remain in detention.

Non expulsion for medical reasons:

A “residence permit for medical emergency” can be obtained when the appealer can prove that adequate medical care is not available in the country of origin (e.g. lack of medicines or uncertainty about treatment), the medical care does not suffice (e.g. the patient is recalling traumatic experiences in the country of origin), or the necessary informal care is not available in the country of origin (e.g. the social care of relatives). A residence permit for medical emergency must be renewed yearly. The decision is based on the availability of the necessary health care; financial reasons and individual effective access are not considered to be valid arguments.

The neutrality of the decision regarding the availability of adequate health care in countries of origin is disputable. Firstly, the opinions of medical doctors can vary. The decision made by the immigration authorities is based on the advice of a medical consultation office (Bureau *Medische Advisering, BMA*). The doctor of *BMA* bases the medical advice on information provided by the doctor who is treating the applicant. This information gathering usually is only on non paper. The goal of the doctor of the *BMA* is to see the applicant personally, but often this is not attained. There are several cases in which the doctor of *BMA* has not even consulted the doctor who is treating the applicant. The question is on which information the doctor of *BMA* bases its advice (which will determine the outcome of the decision of the *IND*). Information of availability of the medical treatment in the country of origin is acquired by an international organisation (International SOS). Questions have been raised as to how these organisations are being monitored.

Additionally, questions about the availability of health care in the country of origin (e.g. what distance to health care is reasonable, what to do in emergency situations) are often at a disadvantage of the applicant.

Personal identification is compulsory, excluding some people from the possibility to start the legal procedure. During the procedure, the applicant cannot claim the right to shelter nor to health insurance. When the applicant has obtained a temporary residence permit, he or she cannot claim the right to work.

Dokters van de Wereld - Netherlands

PORTUGAL

HEALTH SYSTEM

The Health System is composed of three co-existing systems: a tax-based National Health System, special public and private insurance schemes for certain professions, and private voluntary health insurance. The NHS provides universal coverage, which is predominantly funded through general taxation and has some responsibilities delegated to regional bodies. Cost sharing is a part of the NHS (with some exceptions), although values set for co-payments are typically small, when compared to the cost of the service[1].

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

Nationals and authorised residents[2]. The Portuguese NHS establishes the right of all citizens to health protection, a guaranteed universal right to health care (nearly free at the point of use because patients must pay a symbolic moderating fee) through the NHS and access to the NHS for all citizens regardless of economic and social background[3].

Theoretically, there are no services explicitly excluded from NHS coverage. However, throughout Portugal, dental care is not covered by the NHS.

Patients in Portugal participate in health care financing via co-payments and co-insurance. For certain health care services delivered by NHS facilities, the patient pays a certain fixed amount per use of primary and secondary care, emergency care, home visits, diagnostic tests, therapeutic procedures, hospital admission and outpatient surgery.

For pharmaceutical products, a co-insurance scheme exists, for which the patient pays a certain fixed proportion of the cost of the pharmaceutical. The co-insurance on pharmaceuticals varies depending on the therapeutic value of the drug. Full payment is required for those pharmaceuticals deemed to have little or no clinical value. On the contrary, the state covers the total cost of medication used by highly vulnerable groups of patients including people with diabetes, TB, and HIV/AIDS[4].

There are some categories of patients who do not have to pay any nominal contribution (*taxa moderadora*). These individuals include, among

1. European Observatory on Health Systems and Policies, *Health Systems in Transition – Portugal,* 2007; See Art. 64 of the Portuguese Constitution.

2. Regarding entitlements of immigrants with residence permits, see *Despacho do Ministério da Saúde* nº 25.360/2001 of 16 November 2001 and *Circular Informativa nº 12/DQS/DMD* of 7 May 2009.

3. See *Despacho* nº 25 360/2001.

4. See *Decreto-Lei 118/1992 - Regime de comparticipação do estado no preço dos medicamentos* of 25 June 1992 as amended by *Decreto-Lei 129/2005* of 11 August 2005.

others,: i) women in family planning, pregnant women and women who have given birth (within 8 weeks); ii) children under 12 and children and adolescents living in youth centres; iii) people with low income, pensioners, people receiving unemployment and other specific social benefits; and iv) people with certain chronic and transmissible diseases (including diabetes, HIV-AIDS and tuberculosis)[5].

This system also applies to asylum seekers[6] (while decision is pending except in cases where the medical situation of the patient requires to continue treatment[7]). All of these patients may register as NHS users (*utente do SNS*)

However, with the exception of children younger than sixteen, undocumented migrants' access to health care varies depending on the length of their stay in Portugal.

- For individuals who have been residing in Portugal for more than 90 days: They have access to all types of care, medication and tests. However, to benefit from these entitlements, they must comply to certain conditions:
  - They must obtain a document issued by the "*Junta de Freguesia*" (the local borough council) certifying that the applicant has been living in Portugal for more than 90 days. In addition, they have to submit two witness declarations or a signed statement[8].
  - Once this requirement has been fulfilled, they must go to their habitual residence's health centre to get the "*inscripção esporádica*" (temporary registration as a patient). This temporary registration allows access to health care on a single occasion and is renewable. Some health centres allow access to healthcare for multiple occasions with the same registration.
  - The patients must pay the moderating fee unless they obtain a certificate from the local borough council stating lack of economic means or they seek emergency care, care for diseases of compulsory notification (e.g. tuberculosis, HIV/AIDS or Sexually Transmitted Diseases), ante and post natal care, vaccination, or family planning. Undocumented children and persons who have applied for family reunification are also exempted from paying the moderating fee[9].

- If they have been residing in Portugal for less than 90 days or they do not succeed in proving their residence for 90 days: Like everybody else, they can receive free of charge treatment of contagious diseases (including tuberculosis and HIV/AIDS), ante and post natal care, vac-

5. See Art. 2 of Decreto-Lei n.º 173/2003 of 1 August 2003; *Circular Informativa nº 12/DQS/DMD* of 5 May 2009.

6. Art. 53(1) of *the Lei n.º 15/98 estabelece um novo regime jurídico-legal em matéria de asilo e de refugiados* of 26 March 1998; See *Portaria n.º 30/2001, dos Ministérios da Administração Interna e da Saúde,* of 17 January 2001*; Portaria n.º 1042/2008 dos Ministérios da Administração Interna e da Saúde* of 15 September 2008.

7. *See Portaria* n. º 30/2001.

8. See *Despacho do Ministério da Saúde nº 25 360/2001*; Article 34 of *Decreto Lei nº135/99* of 22 April 1999 and *Circular Informativa nº 12/DQS/DMD* of 5 May 2009: "The residence documents will be issued as long as the *Junta de Freguesia* receives direct knowledge of the residence, receives this evidence through oral or written statement of two witnesses of persons living in the residence area or a sworn declaration of the person concerned".

9. See point *7 of Circular Informativa nº 12/DQS/DMD.*

cination and family planning. However, they will have to pay the full cost of primary, secondary and emergency care if they are not exempted by the health administration's prior submission of official documents certifying a precarious economic situation. In fact, according to Portuguese legislation, emergency care cannot be refused if the patients lack the means and, in addition, it is established that the economic situation of the patient will always be taken into account by the authorities when charging the expenses incurred[10].

Generally speaking, Portuguese legislation regarding access to health care for undocumented migrants is rather ambiguous, which is mainly caused by the existence of many administrative circulars and other administrative documents trying to clarify and give guidelines about the legislation.

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access co-paid.

Conditions:
- To register in the NHS and show the "NHS user card".
- To pay the moderating fee. This fee goes from €3.60 to €9.20[11] depending on whether the services are provided by health centres or hospitals. Exempted: pregnant women and women who recently gave birth; people with low income or receiving specific social benefits; and people with certain chronic and transmissible diseases.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
If they can prove residence over 90 days: same as nationals.
If they cannot prove residence over 90 days and are not exempted from payment: NO access free of charge (payment of full cost).

10. See PICUM, *Access to health care for undocumented migrants*, p. 72 and ACIDI, *Imigração em Portugal - Informaçao útil*, 2008, p. 76.

11. See Annex to the *Portaria n.º 1637/2007* of 31 December 2007.

Conditions:

Two different situations:

- If they prove residence over 90 days:
  - ➤ Officially prove residence over 90 days;
  - ➤ Get the "temporary registration" as a patient in the health centre;
  - ➤ and Payment of the moderating fee, if not exempted. If they lack economic resources, they have to ask the health administration for a certificate of precarious economic situation to be exempted from payment of moderating fees.
- If they do not prove residence over 90 days:

If they lack economic resources:

- ➤ Ask the health administration for a certificate of precarious economic situation to be exempted from payment.

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid.

Conditions:

- ➤ To register in the NHS and show the "NHS user card";
- ➤ To pay the moderating fee. This fee increases from 2.15€ to 4.40€[12] depending on whether the services are provided by health centres or hospitals. Exempted: pregnant women and women who recently gave birth; people with low income or receiving specific social benefits; and people with certain chronic and transmissible diseases; and
- ➤ Previous authorisation by the general practitioner to access secondary care.

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

If they can prove residence over 90 days: same as nationals.

If they cannot prove residence over 90 days and are not exempted from payment: no access free of charge (payment of full cost).

Conditions:

Two different situations:

12. See Annex to the *Portaria n.º 1637/2007*.

- If they prove residence over 90 days:
  - Officially prove residence over 90 days;
  - Obtain the "temporary registration" as a patient in the health centre; and
  - Payment of the moderating fee, if not exempted. If exempted, they have to ask the health administration for a certificate of precarious economic situation to be exempted from payment of moderating fees.
- If they do not prove residence over 90 days:

If they do not have economic resources:

- Ask the health administration for a certificate of precarious economic situation to be exempted from payment.

HOSPITALISATION (INPATIENT CARE)

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid.

Conditions:

- To register with the NHS and show the "NHS user card" and;
- To pay the moderating fee: €5.10 per day during the first 10 days[13]. Exempted: pregnant women and women who recently gave birth; people with low income or receiving specific social benefits; and people with certain chronic and transmissible diseases.

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

Same as nationals ONLY if they can prove residence over 90 days.

If they cannot prove residence over 90 days and are not exempted from payment: NO access free of charge (payment of full cost).

Conditions:

Two different situations:

- If they prove residence over 90 days:
  - Officially prove residence over 90 days;
  - Get the "temporary registration" as a patient in the health centre; and
  - Payment of the moderating fee, if not exempted. If they lack economic resources, they have to ask the health administration for a certificate of precarious economic situation to be exempted from payment of moderating fees.
- If they do not prove residence over 90 days:

13. See Annex to the *Portaria n.º 1637/2007.*

- If they lack economic resources:
  - ➤ Ask the health administration for a certificate of precarious economic situation to be exempted from payment.

UNDOCUMENTED MIGRANTS

Entitlements:

Same as nationals ONLY if they can prove residence over 90 days.
If they cannot prove residence over 90 days and are not exempted from payment: NO access free of charge (payment of full cost).

Conditions:

Two different situations:

- If they prove residence over 90 days:
  - ➤ Officially prove residence over 90 days;
  - ➤ Get the "temporary registration" as a patient in the health centre; and
  - ➤ Payment of the moderating fee, if not exempted. If they lack economic resources, they have to ask the health administration for a certificate of precarious economic situation to be exempted from payment of moderating fees.
- If they do not prove residence over 90 days:

If they lack economic resources:

- ➤ Ask the health administration for a certificate of precarious economic situation to be exempted from payment.

ANTE AND POST NATAL CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge until 8 weeks after delivery[14].

Conditions:

- ➤ To register in the NHS and show the "NHS user card".

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

Same as nationals (regardless of length of residence).

Conditions:

No particular conditions required.

14. See Art. 2 of *Decreto-Lei n.º 173/2003.*

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge or co-paid (payment of certain amount of the cost depending on the category of medication).

Conditions:

- To register with the NHS and show the "NHS user card"; and
- To pay certain amount of the cost of the pharmaceuticals: 0% for Category A (severe diseases like TB or HUV); 30% for Category B and 60% for Category C. Exceptions: these percentages are decreased for certain groups of people, such as pensioners[15].

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

Same as nationals ONLY if they can prove residence over 90 days.
If they cannot prove residence over 90 days: NO access free of charge (payment of full cost).

Conditions:

- If they prove residence over 90 days:
  - Officially prove residence over 90 days;
  - Obtain the "temporary registration" as a patient in the health centre; and
  - Pay certain amount of the cost of the pharmaceuticals.

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Screening anonymous and free of charge.

Conditions:

No particular conditions required.

15. See *Decreto-Lei 118/1992 - Regime de comparticipação do estado no preço dos medicamentos* of 25 June 1992 as amended by *Decreto-Lei 129/2005* of 11 August 2005; *See Portaria 1474/2004* of 21 December 2004 as amended by *Portaria 393/2005* of 5 April 2005.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals (irrespective of length of residence).

Conditions:
Same as nationals.

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
➤ To register in the NHS and show the "NHS user card".

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals (irrespective of length of residence).

Conditions:
No particular conditions required.

OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge for all diseases of compulsory notification, including tuberculosis[16].

Conditions:
➤ To register in the NHS and show the "health card".

16. For the list of diseases, see www.dgs.pt/upload/membro.id/ficheiros/i008987.pdf.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals (irrespective of length of residence).

Conditions:
No particular conditions required.

CHILDREN

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge for children up to 12 and older children living in youth centres and co-paid for the rest.
Vaccination: No vaccination is compulsory. Some are recommended. Vaccinations included in the National Vaccination Program are free of charge.

Conditions:
- Register in the NHS as beneficiaries and show the "NHS user card"; and
- Pay moderating fees, except for children below 12 and older children staying in centres for children[17]; and
- Previous authorisation by general practitioners to access secondary care.

ASYLUM SEEKERS' CHILDREN

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNACCOMPANIED ASYLUM SEEKING CHILDREN

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

17. art.2(1)(b) and (h) of *Decreto-Lei n.º 173/2003.*

UNACCOMPANIED (MIGRANT) CHILDREN

Entitlements:
Same as nationals (only children sixteen years old and younger).

Conditions:
Same as nationals
To guarantee their access, children have to register in the registry for undocumented children managed by the High Commissioner for Immigration and Intercultural Dialogue (ACIDI).

CHILDREN OF UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals (only children sixteen years old and younger[18]).

Conditions:
Same as nationals. To guarantee their access, children have to register with the registry for undocumented children managed by the High Commissioner for Immigration and Intercultural Dialogue (ACIDI)[19].

18. See *Circular Informativa n.º 65/DSPCS of 26 November 2004* and point 12 of *Circular Informativa n.º 12/DQS/DMD*.

19. *Decreto-Lei n.º 67/2004* of 25 March 2004; *Portaria n.º 995/2004* of 9 August 2004; *Circular Informativa n.º 65/DSPCS* of 26 November 2004.

20. European Parliament – Directorate General internal policies, "Conditions des ressortissants de pays tiers retenus dans des centres (camps de détention, centres ouverts, ainsi que des zones de transit), avec une attention particulière portée aux services et moyens en faveurs des personnes aux besoins spécifiques au sein des 25 Etats membres de l'Union Européenne ". Rapport de visite au Portugal, 2007, pp. 10-11 (REF: IP/C/LIBE/IC/2006-181.) avaible at www.cimade.org/uploads/File/admin/Rapport_Portugal.pdf.

DETENTION CENTRES

ADULTS

Access to basic health care and if necessary transfer to public hospital. The costs are assumed by each detention centre. Health services will be adapted to patients' specific needs.

CHILDREN

Access to "adequate health care". Children can only be confined in detention centres if their parents are also inside the centre. If the centre does not have the facilities to receive families, the child will stay with his/her mother[20].

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status: Aside from general legislation applied in cases of compulsory notification diseases and suspicious of criminal offences, there are no other legal provisions that require health care providers and health administrations to transfer information about administrative status to immigration authorities.

NON EXPULSION FOR MEDICAL REASONS

RESIDENCE PERMIT FOR MEDICAL REASONS: "TEMPORARY RESIDENCE PERMIT WITH EXEMPTION OF RESIDENCE VISA"

WHO ?

All seriously ill undocumented migrants can apply for this temporary permit[21].

CONDITIONS[22]:

- Disease that requires prolonged medical assistance.
- Disease that prevents return to the country of origin.
- Treatment must avoid a health hazard to the concerned person.
- The application must be submitted to the Foreigners and Borders Service (*Serviço de Estrangeiros e Fronteiras*) together with:
  - A valid passport or other valid travel document (*documento de viagem*);
  - Proof of housing.
  - Proof of subsistence means.
  - Requisition by the SEF (foreigners and borders Service) to access the Portuguese criminal record registry.
  - Criminal record issued by the country of origin.
  - Official medical document certifying that the applicant suffers a prolonged illness that prevents him/her from returning to his/her country of origin without involving a risk for the applicant's health.

DURATION:

The permit is valid for one year and is renewable for successive periods of two years[23].

ACCESS TO HEALTH CARE:

Once the permit has been granted, the patient has the right to access health care on same grounds as nationals[24].

21. See Art. 122(1)(g) of the *Act 23/2007* of 4 July 2007, on the legal framework of entry, permanence, exit and removal of foreigners into and out of national territory.

22. See Art. 122(1)(g) of the *Act 23/2007*; See Art. 61(1) and (8) of the *Decreto Regulamentar n.º 84/2007* of 5 November 2007 implementing the *Act 23/2007;* See also application form available at www.sef.pt/documentos/57/Concessao_sem_Visto_I.pdf.

23. Art. 75(1) of the *Act 23/2007* and Art. 63 of the *Decreto Regulamentar n.º 84/2007* implementing the *Act 23/2007.*

24. Art. 83 of the *Act 23/2007.*

IN PRACTICE

THE VISION OF MDM PORTUGAL REGARDING THE SITUATION IN PRACTICE[25]

Access to health care for undocumented migrants – adults and children:

In practice, accessing health care assumes an ability to take all the administrative steps: coping with complexity of the system, lack of information, language barrier, etc. In addition, undocumented migrants who do not succeed in proving residence for more than 90 days must pay for many of the treatments received.

There is also the fear that revealing presence in Portuguese territory in such an open manner, could lead to a risk of deportation, even though in principle, the authorities do not have access to patients' medical records, and health professionals are subject to a code of confidentiality.

In addition, the general shortage of doctors and resources and the overcrowding of the emergency departments have also an impact on undocumented migrants' effective access to health care.

Children can register in the National Health System independently of their administrative status and they normally access health care from the very first day they enter the country. As Portuguese children, they have to pay the "ticket" unless there is evidence they are in a precarious economic situation, which is not very difficult to prove. The social assistant of the hospital is normally in charge of evaluating whether the family of the child does not have the means to pay the nominal contribution.

Access to health care in detention centres:

For the provision of medical care, the SEF ("Foreigners and Frontiers Services") has a protocol with Médecins du Monde Portugal. Médecins du Monde ensures, through health professionals, the provision of medical care to detainees in the detention centre in Porto. Every Tuesday, one doctor and a nurse provide consultations to persons confined in the centre. There is a consultation room with basic equipment paid by the SEF. In case of language difficulties, the patient can be assisted by an interpreter. In case of emergency, detainees are brought to a hospital and Médecins du Monde monitors the procedure. The choice of hospital depends on the illness concerned.

Medicos do Mundo - Portugal

25. About the situation in practice and the role of civil society in Portugal, see also PICUM, *Access to health care for undocumented migrants*, pp. 73-78.

SPAIN

HEALTH SYSTEM

Spain has a tax-based National Health System with a remarkable decentralisation of competencies to the autonomous communities. There are also special public and private insurance schemes for certain professions and private health insurance.

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

Nationals and authorised residents. As a general principle, health care is provided free of charge in health centres and hospitals within te National Health System to "all Spaniards and foreign nationals residing in the national territory[1]" However, there is still a percentage (rather small) of Spaniards excluded from the system[2]. The vast majority of medical care and services are included with minor exceptions such as optical products or in vitro fertilisation treatments.

The only condition to access health care (except in case of emergency) is to present the "social security card" or the "*tarjeta individual sanitaria*" ("individual health card"), either if they are workers paying social security contributions (and members of their families) or persons with not enough financial means[3]. The "social security card" is progressively disappearing and all entitled persons usually receive the "individual health card" that it is issued by the health departments of the different Spanish Autonomous Communities. The only requirement is to register with the local civil registry ("*padrón*") and to show an ID card and proof of address in the residence area.

As this is the case for nationals, in most of the Autonomous Communities, to obtain the "individual health card", **asylum seekers[4] and undocumented migrants** (except children and pregnant women) have to register first in their local civil registry and prove that they lack enough economic resources[5]. There are conditions to register[6]: i) to have a valid passport; ii) and to provide a proof of habitual residence (through a housing contract, an authorisation by the landlord or co-tenant or a contract for the supply of water, electricity, etc.). In addition, registration has to be renewed every two years in order to keep the health card.

1. Article 43 of the Spanish Constitution of 1978; Article 1(2) of the *Ley General de Sanidad 14/1986* of 25 April 1986.

2. Approximately 5% of the population is covered by other public schemes different from the General Social Security System. Out of this percentage, around 200,000 persons are not covered by any public system. See José Manuel Freire Campo, "Los sistemas de aseguramiento sanitaria de riesgos de enfermedad en España", in *Ciudadanía Sanitaria*.

3. See the Real Decreto *1088/89 por el que se extiende la cobertura de la asistencia sanitaria de la Seguridad Social a las personas sin recursos suficientes* of 8 September 1989. This norm extends the right to access health care within the National Health System to persons under a certain economic threshold who do not have social security. The threshold is the "national minimum wage" (624€/month for 2009).

4. Asylum seekers could be subject to a compulsory medical examination upon arrival. See Article 9 of the *Real Decreto 2393/2004 por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración Social* of 30 December 2004 (implementing Regulation of the *Ley 4/2000*).

5. According to the applicable regional rules, if it is not possible to prove lack of resources, it is generally accepted to do a sworn statement.

6. Article 12 of the Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social of 11 January 2000, as amended; see also Article 16(2) of the Ley 7/1985 Reguladora de las Bases del Régimen Local of 2 April 1985 as amended and the Resolución conjunta de la Presidenta del Instituto Nacional de Estadística y del Director general de Cooperación Territorial, por la que se dictan instrucciones técnicas a los Ayuntamientos sobre actualización del Padrón municipal of 4 July 1997.

A number of undocumented migrants do not obtain the "health care" because of the impossibility to comply with these requirements. In this case, and for certain specific chronic diseases like HIV and diabetes, undocumented migrants can access the treatment in some regions with the "*Documento de asistencia sanitaria – DAS*" ("health care document") that allows them to access the needed treatment without the "individual health card." To obtain the "*DAS*", it is not necessary to have a valid passport; however, this document has a validity of six months, which is renewable another six months and patients could be forced to interrupt their treatments.

To avoid difficulties to access health care, some Autonomous Communities have developed a more welcoming system consisting of providing undocumented migrants with a health card (called in some cases "solidarity card") without prior registration in the town hall. This is the case of *Andalucía, Comunidad Valenciana, Región de Murcia and Extremadura*.

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
No particular conditions.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

Two different situations:

- Affiliated members of beneficiaries of social security:
  - ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area; and
- Persons with low income:
  - ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area and prove lack of sufficient economic resources; and
  - ➤ Previous authorisation by the general practitioner or other specialist to access secondary care.

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals[7].

UNDOCUMENTED MIGRANTS

Entitlements:

Same as nationals.

Conditions:

Same as nationals with the same level of resources (however, in practice, they may not comply with the requirements to register in the local civil registry and therefore may not obtain the "individual health card.")

HOSPITALISATION (INPATIENT CARE)

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

Two different situations:

- Affiliated members of beneficiaries of social security:
  - ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area.

7. Article 5(1) of the *Ley 5/1984 reguladora del derecho de asilo y de la condición de refugiado* of 26 March 1984 as amended; Article 12 of the *Ley 4/2000.*

- Persons with low income:
  - ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area and proof lack of sufficient economic resources.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
Same as nationals with the same level of resources (however, in practice, they may not comply with the requirements to register in the local civil registry and therefore may not obtain the "individual health card.")

ANTE AND POST NATAL CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
Two different situations:

- Affiliated members of beneficiaries of social security:
  - ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area.
- Persons with low income:
  - ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area and proof lack of sufficient economic resources.

ASYLUM SEEKERS

Entitlements:
Same as nationals[8].

Conditions:
No particular conditions required (in this case, there is no need to register in the town hall to obtain the "individual health card").

8. Access free of charge during pregnancy, birth giving and post-natal care, see Article 12(4) of *the Ley 4/2000*.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals[9].

Conditions:
No particular conditions required (in this case, there is no need to register in the town hall to obtain the "individual health card").

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access co-paid (payment of 40% of the cost of medication).

Conditions:
- Affiliated members of beneficiaries of social security
  - ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area; and
- Persons with low income:
  - ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area and proof lack of sufficient economic resources; and
  - ➤ To pay 40% of the cost of the pharmaceuticals. Exceptions: pensioners, persons receiving temporary incapacity benefits and specific chronic diseases.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals[10].

Conditions:
Same as nationals with the same level of resources (however, in practice, they may not comply with the requirements to register with the local civil registry and thus may not obtain the "individual health card".

9. Ibid.

10. Valencia region provides medicines free of charge to undocumented migrants in possession of the "Solidarity Card".

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
➤ To show the "individual health card", however there are also public centres (e.g. ETC, "*centros de enfermedades de transmission sexual*") and NGOs that do not require any documentation.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
Two different situations:
- Affiliated members of beneficiaries of social security:
  ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area.
- Persons with low income:
  ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area and proof lack of sufficient economic resources.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
Same as nationals with the same level of resources. However, in practice, they may not comply with the requirements to register with the local civil registry and therefore may not obtain the "individual health card". In case they do not comply with the conditions to register, in some regions (like Madrid and Galicia), they can obtain the "Health care document" (*Documento de Asistencia Sanitaria*) that allows them to access ARV treatment for a maximum of one year.

TREATMENT OF OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
Two different situations:
- Affiliated members of beneficiaries of social security:
  - ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area.
- Persons with low income:
  - ➤ Show the "individual health card". To obtain the card, they must register with the local civil registry of their residence area and proof lack of sufficient economic resources.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
- ➤ Same as nationals with the same level of resources (however, in practice, they may not comply with the requirements to register with the local civil registry and thus may not obtain the "individual health card". Nonetheless, in many regions, public authorities largely facilitate access to

diagnosis and treatment of TB and other serious infectious diseases to everyone through the "Health care document" or through informal ways).

CHILDREN

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Same as adults: Access free of charge to all types of health care.
Vaccination: No vaccination is compulsory. Some are recommended and free of charge.

Conditions:

- To show the "individuals health card" (there are children registered on the health card of their parents); and
- Previous authorisation by the general practitioner or other specialist to access secondary care.

ASYLUM SEEKERS' CHILDREN

Entitlements:

Same as nationals[11].

Conditions:

Same as nationals. In this case, there is no need to register with the town hall to obtain the "individual health card".

UNACCOMPANIED ASYLUM SEEKING CHILDREN

Entitlements:

Same as nationals[12].

Conditions:

Same as nationals. In this case, there is no need to register with the town hall to obtain the "individual health card".

UNACCOMPANIED (MIGRANT) CHILDREN

Entitlements:

Same as nationals (children younger than 18)[13].

Conditions:

Same as nationals. In this case, there is no need to register with the town hall to obtain the "individual health card"[14].

11. Article 12(3) of the *Ley 4/2000.*

12. Ibid.

13. Ibid.

14. Ibid.

CHILDREN OF UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals (children younger than 18)[15].

Conditions:
Same as nationals. In this case, there is no need to register with the town hall to obtain the "individual health card".

DETENTION CENTRES

ADULTS

Access to "adequate health care": primary care inside the centre and secondary care and hospitalisation outside the centre.
"Medical service" will be available in each centre under the responsibility of a general practitioner and the support of a nurse. This service will be in charge of medical and pharmaceutical assistance as well as the organisation and monitoring of all sanitary facilities in regards to food, personal hygiene, clothing, sanitation, airing, lighting conditions, and isolation of persons with a physical or mental illness or drug addiction that does not require hospitalisation but a separation from the others.
There will be a medical examination upon arrival (within 24h) to assess possible physical or mental illness or drug addiction and provide adequate treatment and, if necessary, isolation or hospitalisation[16].
The provision of medical and social services is the competence of the Ministry of the Interior, however, they may arrange that these services are provided by other Ministries or non-for-profit public or private entities[17]. In many cases, these services are provided by medical specialists belonging to the «National police».

CHILDREN

Access to "adequate health care" on same conditions as adults. Children can only be confined in detention centres on request of their parents if they are also inside the centre and if the detention centre has facilities that guarantee family privacy[18].

15. Ibid.

16. *Article 62 bis (d) of Ley 4/2000* and Articles 12, 14(1), 14(5) and 22 of *the Orden Ministerial sobre funcionamiento y régimen interior de los centros de internamiento de extranjeros* of 22 February 1999.

17. Article 6(1) of the *Orden Ministerial* of 22 February 1999.

18. Articles 62(4) and 62 *bis* (1) (i) and Article 14(6) of the *Orden Ministerial* of 22 February 1999.

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status: Since 2003, the police can access data of foreigners registered in the town hall[19]. This could influence undocumented migrants' decisions to apply for the "individual health card."

NON EXPULSION FOR MEDICAL REASONS

NO RESORT TO EXPULSION SANCTIONS OR SUSPENSION OF EXPULSION ORDERS FOR MEDICAL REASONS

If there is an application for asylum or if, in case of pregnancy, there is a risk for the fetus or for the mother's life or physical integrity, no expulsion order will be implemented or, if imposed, this will be suspended[20].

RESIDENCE PERMIT FOR MEDICAL REASONS: "AUTHORISATION OF TEMPORARY RESIDENCE ON HUMANITARIAN GROUNDS"

WHO ?

Seriously ill undocumented migrants[21].

CONDITIONS[22]:

- Serious illness "*sobrevenida*" (arising after entering the country) that requires specialised medical care.
- Access to the country of origin must be impossible.
- Not providing or interrupting the treatment must entail a serious risk for the patient's health or life.
- The application must be submitted to the competent authority: Foreigners Offices (*Oficinas de extranjeros*) and otherwise police stations (*Comisarías de Policía*) or Offices of the Ministry of Labour and Immigration

19. Article 3 and Seventh Additional Provision of the *Ley Orgánica 14/2003* of 20 November 2003 amending *Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social* .

20. Article 57(6) and 58(3) of the *Ley 4/2000*.

21. See Article 31(3) of *the Ley* 4/2000; Article 45(4)(b) of the *Real Decreto* 2393/2004. As for the granting of this permit to rejected asylum seekers, see Article 31(4) of Real Decreto 203/1995 *por el que se aprueba el Reglamento de Aplicación de la Ley 5/1984, de 26 de marzo, reguladora del Derecho de Asilo y de la Condición de Refugiado, modificada por la Ley 9/1994 de 19 de mayo* of 10 February 1995 (implementing *the Ley* 5/1984 on the right to asylum).

22. See Article 31(3) of the *Ley 4/2000*; Article 45(4)(b) of *the Real Decreto 2393/2004*; See also the application form available at www.mir.es/SGACAVT/modelos/extranjeria/modelos_extranje/ex_00.pdf.

(*Áreas o Dependencias de Trabajo e Inmigración*) together with:

- Valid passport or valid travel document (*título de viaje*), otherwise valid *cédula de inscripción*.
- Criminal record issued by the country of origin or provenance.
- Medical certificate issued by the competent authority to assess the necessity in regards to the illness arising after entering Spain.

DURATION:

One year renewable for periods of one year. They can only apply for permanent residence after five years as long as the concerned illness does not persist[23].

ACCESS TO HEALTH CARE:

On equal grounds as Spanish nationals. Besides the elimination of specific administrative barriers, this permit does not change the conditions to access the health system that is guaranteed to all undocumented migrants.

23. Articles 45(6), 47(1) and 72 of the *Real Decreto 2393/2004*.

IN PRACTICE

THE VISION OF MDM SPAIN REGARDING THE SITUATION IN PRACTICE

Access to health care for undocumented migrants - adults:

While it is true that the situation in Spain in regards to access to healthcare for the immigrant population has seen notable progress in recent years, it is no less true that there is a significant percentage of immigrants who are encountering obstacles with respect to access to the standard healthcare provision. This was highlighted by *Médicos del Mundo* Spain in the study "*Barriers to access to the public health service encountered by at-risk or socially excluded populations seeking assistance from Médicos del Mundo services*" published in November 2007.

With a goal to determine the obstacles faced by immigrants when continuously seeking access to healthcare services, as part of their daily routine, *Médicos del Mundo* has been carrying out a survey of people coming to them for help. The survey questions offer nine possibilities: 1) Administrative difficulties, 2) Not knowing where to go, 3) Language barriers, 4) Cultural barriers, 5) Fear of discrimination, 6) Fear of being reported, 7) Unsuitable hours, 8) Rejection by healthcare professionals, 9) Other.

The information from this report on Barriers to access to the public health service, 2007, reveals that 81% of a total of over 3,000 people surveyed stated that they had encountered one or more barriers preventing them from gaining access to healthcare services. Similarly, the daily practice of *Médicos del Mundo* Spain's work reveals that 40% of this total who encounter obstacles accessing the health service are not taking the necessary steps to obtain "the individual health card" and therefore fall outside the healthcare system.

In Spain, access to emergency healthcare is guaranteed for all people, independent of their administrative status. Access to non-emergency treatment is free (and, in principle, universal) for all people holding a public health service entitlement card, which is obtained by complying with a series of administrative requirements among which the obligation of registering should be mentioned. Pregnant women and children under 18 are exempt from compliance with any requirement.

Specifically, difficulty in complying with these administrative requi-

rements in order to obtain a health service entitlement card is one of the most common barriers faced by the immigrant population when attempting to exercise their right to healthcare (45% of those surveyed by MDM stated they had encountered this type of administrative barrier). An uncertain number of immigrants have problems with registration because, although the procedure is free, it requires possession of a valid passport and proof of a fixed address.

Registration as a prerequisite to obtaining the health service entitlement card is a requirement throughout Spain with the exception of Valencia, Andalusia, Murcia and Extremadura.

Another barrier highlighted by immigrants is lack of knowledge. Few of them are aware that they can obtain the "individual health card" by registering; they are unaware of the administrative requirements or even the very existence of the right to access to healthcare.

The language barrier is mentioned by 14.3% of those surveyed. This obstacle is encountered predominantly by immigrants who have stayed in the host country for at least 1 or 2 years. Although public health centres do have male and female intercultural mediators, there are still not enough of them to satisfy all the requests of the immigrant population whose mother tongue is not Spanish.

Other difficulties also mentioned are: cultural barriers (3.3%), fear of discrimination (3.2%), unsuitable hours (1.3%), fear of being reported (1.1%), and being turned away by healthcare professionals (1.0%).

The main obstacles to access healthcare services vary as the duration of stay without residence permits in the host country increases. During the initial period, such obstacles mainly entail matters relating to accommodation, failure to adapt to doctors' working hours, lack of health insurance, fear of being reported to the authorities, or lack of knowledge about where to go to seek medical attention. Cultural differences are not mentioned as obstacles during the first months' stay. The language barrier is only mentioned as an obstacle to access the health service after a number of years in the host country have passed.

Access to health care for asylum seekers - adults:

In regards to asylum seekers, although by law, access to the public healthcare service and the health service entitlement card should not present any problem, in practice, access difficulties do arise. As CEAR (*Comisión Española de Ayuda al Refugiado*), the Spanish Commission for Assistance to Refugees indicates, difficulties exist during the first phase, i.e.,

once the application for asylum has been formally submitted but no reply has yet been obtained during this time, the applicant possesses no identification document (not even a foreigner's national identity number) and therefore the social security system cannot register them.

Asylum seekers also face difficulties during the period in which they are planning to seek asylum but have not yet completed the application process, mainly when they have no identity documentation. In the Community of Madrid (*Comunidad de Madrid*), the application period takes around a week but in other cities, this period of time can take up to two months.

Access to health care in detention centres:

Little information exists concerning health situation and access to healthcare and medicine in Spanish detention centres. In any case, the few existing testimonies, complaints and reports have revealed important failures that allows *Médicos del Mundo* to believe that centres could be suffering from very serious problems from a sanitary and medical perspective.

The latest report by the ombudsman issued in May 2009 reports serious sanitary shortcomings suffered by people interned in *CIE Aluche*, Madrid. According to the ombudsman, healthcare in the centre has worsened since his last visit there. Medical consultations were reduced to two a week, which rules out a permanent stable medical service, as well as health checks for detainees within 24 hours of their arrival as stipulated by regulations. In addition, medicine is not dispensed outside healthcare staff working hours and treatment prescribed to detained persons is interrupted before they enter the centre. The serious shortcomings observed are being exacerbated by the insalubrious conditions in which people are obliged to live: difficulties accessing the bathroom at night, lack of shelter from the sun or rain in courtyards, and scant provision of hygiene products.

Transfer or access to information about administrative status:

The law allows the police to access the municipal registers. This means a modification of the very purpose of the register which is to determine the actual population of a given municipality. Being wary of this police practice, many foreigners whose situation is irregular prefer not to register, and as a result do not have access to the health service.

In the report *Municipal management of the registering of immigrants, 2008, the Síndic de Greuges* (Ombudsman) of Catalonia highlights the

high percentage of consistories that use the municipal register beyond their legitimate sphere of competence. Specifically, when access to the register is requested by the National Police or Civil Guard, in almost all cases, this is done by prior appointment at which the reasons for consultation are stated. However, in the case of the municipal police, access is direct in almost half of cases as the request comes from the same municipal administration. This means that in practice, municipalities do not know the number of times that the police have accessed the information in the register. The same ombudsman also mentioned that at least in Catalonia, 60% of local authorities remove immigrants who have an expulsion order from the register and do not inform the persons concerned of said removal.

Non expulsion for medical reasons:

One of the documents required in order to apply for a permit on humanitarian grounds is a medical report certifying that the illness is "*sobrevenida*" (illness arising after the person's arrival in Spain). In practice, current medical techniques cannot determine exactly when the onset of certain illnesses has occurred. Consequently, on many occasions, doctors do not certify that the illness arised after arrival in Spain. By using this criterion, the administration is applying the principle of reverse responsibility in a discriminatory manner (the obligation resting with the ill person to certify that their illness occurred after their arrival in Spain rather than with the administration to provide grounds for refusal of acknowledgement).

Another problem that occurs in practice is that these seriously ill immigrants are obliged, in order to prevent their expulsion, to demonstrate that they cannot receive medical treatment in their country of origin. Given that the administrations of the countries of origin rarely certify the shortcomings of their healthcare systems, it is common to make use of public reports produced by specialist organisations highlighting the failings of these healthcare systems to demonstrate this fact; this matter is usually very complicated.

Furthermore, it should be pointed out that in practice, residency permits granted on grounds of illness occurring after arrival are much more difficult to process in cases of mental illness than in cases of physical illness.

It should also be mentioned that residency permits do not include work permits. As a result, it is also often the case that once the applicant's residency permit has been successfully processed, it cannot be renewed due to insufficient economic means.

Medicos del Mundo - Spain

SWEDEN

HEALTH SYSTEM

A primarily tax-based National Health System based on the principles of equality and free choice in health care, and it covers the whole population. County councils and municipalities have considerable freedom with regard to the organisation of their health services. Responsibility for health and medical care is divided between the state, county councils, and municipalities. Private insurance has increased in recent years, but it is still very limited.

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

The Swedish health system allows **nationals and the majority of authorised residents**[1] to access all medical services with the sole exception of plastic surgery (if not medically recommended). All persons can access the system through their national "personal number" ("*personnummer*")[2]. According to the principle of freedom of choice in health care, patients can seek care anywhere in the country on the same terms as in their own county council area. They must contribute to a minor part of medical and pharmaceutical costs through a nominal contribution. This amount cannot exceed the cost ceilings established by the state (SEK 900 (EUR 96.5) over a 12-month period) and depends on the county council, the type of care, and the professional category of the provider. Payment is normally expected when registering for medical consultation although it is possible to receive an invoice to be paid immediately afterwards. Children below age 18 are exempt from this charge as well as women in need of ante and post natal care, screening and treatment of specific infectious diseases (including HIV)[3], cellular screening, home hospital care help, and family planning.

Asylum seekers are only entitled to access free of charge "care that cannot be postponed" (no definition is provided), ante and post natal care, family planning, abortion, and dental care that "cannot be postponed"[4]. Only asylum-seeking children have the same access to medical

1. Asylum seekers, persons confined in detention centres and persons with temporary protection in the event of a mass influx of displaced persons above 18 years old are only granted "care that cannot be postponed", ante and post natal care, family planning, abortion and dental care that "cannot be postponed". See § 4 (1-4) and § 6 of the *Lag (2008:344)* om *hälso- och sjukvård åt asylsökande m.fl.* of 22 May 2008.

2. The "*personnummer*" is a personal identity number based on their date of birth (yy mm dd) and four other figures. This 10-digit number is used widely to check the rights of access of individuals to social and economic rights. Those without personal identity numbers are basically denied access to these rights unless there is special legislation covering a particular group, such as asylum-seekers or European Economic Area citizens. See PICUM, *Book of Solidarity, vol. 3. Providing assistance to undocumented migrants in Sweden, Denmark and Austria*, 2003, p. 18.

3. This is the case for all diseases mentioned in the "Law of contagious diseases" (*Smittsyddslagen*).

4. See § 4 (1-4) and § 6 of the Lag (2008:344) om *hälso- och sjukvård åt asylsökande m.fl.* of 22 May 2008.

and dental care on equal grounds as children residing in Sweden[5]. Asylum seekers receive health care in any public health centre or hospital except in Stockholm, where there are two health centres treating only asylum seekers. In addition, they must pay a patient fee (around SEK 50 - 4.7 EUR) for each consultation, medicine on prescription and medical transportation, although they can get a compensation from the Migration Board if they have paid more than 400 SEK, 38 EUR) in six months. To prove entitlements, they are typically asked to show their "*LMA-card*", delivered by the Migration board when applying for asylum.

With the sole exception of rejected asylum seeking children and the initiatives taken by few county councils, **undocumented migrants[6]** are not entitled to access the Swedish health system unless they pay for the full cost of health services even in an emergency situation. Since 2008, the "Law 2008:344 concerning health care for asylum seekers, etc." formally excludes rejected asylum seekers older that eighteen years for accessing health care within the Swedish national health system under the conditions recognised to those foreigners entitled to partial access to health care in Sweden[7]. The rest of undocumented migrants are not even mentioned by this law.

The pressure of civil society organisations has prevented the government from keeping in the text a formal prohibition to provide health care to undocumented migrants. The passed law does not require county councils to provide health care to undocumented migrants but also does not prohibit them from doing so if they have the resources and willingness to do it. In fact, it should be noted that the county councils of some Swedish regions have very recently recognised some health care entitlements to undocumented migrants, although it is still too early to evaluate the applicability in practice. Thus, the Stockholm county council has allowed access to pre-natal care to undocumented pregnant women (excluding giving birth and post natal care) and Skåne has agreed on granting rejected asylum seekers the same health coverage as asylum seekers. In other regions, like Gothenburg, this openness has taken place through an individual hospital initiative.

Before the "Law 2008:344", no national legislation even formally denied health care to rejected asylum seekers, who are the only group of undocumented migrants whose presence the government recognises. There were however two general provisions indirectly applied to undocumented migrants since the laws did not formally exclude anyone from their scope of application: i) a provision of the Health and Medical Services Act that

5. Ibid. § 5.

6. Undocumented migrants, particularly those whose application for asylum failed, have been commonly known in Sweden as "*gömda*" (hidden). Now, they are also known by "*papperslösa*" (paperless).

7. Asylum seekers, persons confined in detention centres and persons with temporary protection in the event of a mass influx of displaced persons. See § 4 of the *Lag (2008:344)*.

obliged all county councils to provide health care to all persons in need of "immediate health care" regardless legal status; and ii) the provisions of the «law on diseases control" that did not specifically exclude any category of persons from being treated free of charge in specialised clinics in case of certain sexually transmitted diseases (excluding TB and HIV/AIDS)[8].

Only undocumented children of rejected asylum seekers or children whose application for asylum failed are granted access to health care on the same conditions as nationals. This decision was only laid down in a financial agreement between the State and the county councils. Very recently, "Law 2008:344" has formally recognised this entitlement, although it does it in a very indirect and unclear way[9]. The drafted proposal also mentioned their entitlements in the explanatory part[10]. In regard to the rest of undocumented children living in Sweden (who have not been in the asylum process), they continue to lack visibility and do not have any entitlements to access health care fully or partially free of charge.

Given poor legal entitlements to access health care in Sweden for asylum seekers and undocumented migrants, the UN Special Rapporteur on the Right to Health in his visit to this country in 2006 denounced that this was not consistent with international human rights law and strongly encouraged the Swedish government to "reconsider its position with a view of offering all asylum seekers and undocumented persons the same health care, on the same basis, as Swedish residents[11].

8. See PICUM, *Access to health care for undocumented migrants*, p. 89.

9. See § 4 (4) of *the Lag (2008:344)*.

10. See *Proposition 2007/08:105 Lag om hälso- och sjukvård åt asylsökande m.fl.Ibid*. of 6 March 2008, p. 37.

11. See points 67-85 of the *Report of the Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt. Addendum: Mission to Sweden,* A/HRC/4/28/Add.2 of 28 February 2007.

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid (moderating fee).

Conditions:

- Provide the "*personnummer*"; and
- Pay the nominal contribution: 300 SEK (28.5 EUR).

ASYLUM SEEKERS

Entitlements:

Access co-paid (nominal contribution) to "care that cannot be postponed".

Conditions:

- ➤ Show the "LMA-card"; and
- ➤ Pay the patient fee (50 SEK – 4.7 EUR).

UNDOCUMENTED MIGRANTS

Entitlements:

No access free of charge (payment of full cost: about 2000 SEK - 184 EUR)[12]. Access cannot be denied because the law obliges to provide care.

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid (nominal contribution).

Conditions:

- ➤ Provide the "personnummer"; and
- ➤ Pay the nominal contribution ("outpatient charges"): 140 SEK -13.3 EUR for primary and secondary care.

ASYLUM SEEKERS

Entitlements:

Access co-paid (nominal contribution) only for "care that cannot be postponed".

Conditions:

- Care that cannot be postponed:
  - ➤ Show the "LMA-card"; and
  - ➤ Pay the patient fee (50 SEK - 4.7 EUR).

UNDOCUMENTED MIGRANTS

Entitlements:

No access free of charge (payment of full cost: about 1600 SEK -146 EUR). In addition, access could be denied because the law does not oblige to provide care.

HOSPITALISATION (INPATIENT CARE)

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid (nominal contribution).

12. Data of 2005, see Médecins Sans Frontières, *Experiences of Gömda in Sweden. Exclusion from health care for immigrants living without legal status*, 2005, p. 9.

Conditions:

- Provide the "personnummer"; and
- Pay daily hospitalisation fee (80 SEK - 7.6 EUR) with a ceiling per year.

ASYLUM SEEKERS

Entitlements:

Access free of charge ONLY for "care that cannot be postponed".

Conditions:

- Show the "LMA-card".

UNDOCUMENTED MIGRANTS

Entitlements:

No access free of charge (payment of full cost). In addition, access could be denied because the law does not oblige to provide care.

ANTE AND POST NATAL CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

- Provide the "*personnummer*".

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

- Show the "LMA-card".

UNDOCUMENTED MIGRANTS

Entitlements:

NO access free of charge (payment of full cost, about 500 SEK - 46 EUR for consultation with a midwife and 21000 SEK - 2197 EUR for delivery)[13]. In addition, access could be denied because the law does not oblige to provide care.

13. Ibid.

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access co-paid ("patient charges"). The amount depends on the category of medicines.

Conditions:
- Provide the "*personnummer*"; and
- Pay the "patient charges". The cost ceiling is SEK 1800 (171.4 EUR) over a twelve-month period.

ASYLUM SEEKERS

Entitlements:
Access co-paid ONLY for medication that "cannot be postponed" or prescribed for ante and post natal care, family planning, abortion, and dental care that "cannot be postponed".

Conditions:
- Show the "LMA-card"; and
- Pay the "patient charge" (50 SEK (4.7 EUR) for medicine on prescription).

UNDOCUMENTED MIGRANTS

Entitlements:
NO access free of charge (payment of full cost).

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access anonymous and free of charge.

Conditions:
No particular conditions required.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
➤ Provide the "*personnummer*".

ASYLUM SEEKERS

Entitlements:
Same as nationals (in practice, it is always considered "care that cannot be postponed").

Conditions:
➤ Show the "LMA-card".

UNDOCUMENTED MIGRANTS

Entitlements:
No access free of charge (payment of full cost). In addition, access could be denied because the law does not oblige to provide treatment.

TREATMENT OF OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge as long as the diseases are included in the "Law of contagious diseases".
Access free of charge in specialised clinic for sexually transmitted diseases (eg. gonorrhea, chlamydia and syphilis).

Conditions:
➤ Provide the "*personnummer*".

ASYLUM SEEKERS

Entitlements:

Access free of charge ONLY in specialised clinic for sexually transmitted diseases (eg. gonorrhea, chlamydia and syphilis).

Conditions:

➤ Show the "*LMA-card*".

UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge ONLY in specialised clinic for sexually transmitted diseases (eg. gonorrhea, chlamydia and syphilis).

Conditions:

No particular conditions required.

CHILDREN

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge to all care for children under age 18.
Vaccination is not compulsory. There are recommended vaccinations[14].

Conditions:

➤ Provide the "*personnummer*".

ASYLUM SEEKERS' CHILDREN

Entitlements:

Same as nationals (children up to age 18)[15].

Conditions:

➤ Show the "*LMA-card*".

UNACCOMPANIED ASYLUM SEEKING CHILDREN

Entitlements:

Same as nationals (children up to age 18)[16].

Conditions:

➤ Show the "*LMA-card*".

UNACCOMPANIED (MIGRANT) CHILDREN

Entitlements:

If rejected asylum seeker: Same as nationals.
Otherwise: no access free of charge to any care (payment of full cost). In addition, with the exception of emergency care, access could be denied because the law does not oblige to provide care or treatment.

14. For the list of vaccinations, see www.smittskydd-sinstitutet.se/in-english/activities/the-swedish-vaccination-program/

15. See § 5 of the *Lag (2008:344)*.

16. Ibid.

Conditions:

- If rejected asylum seeking children:
  - ➤ Show the expired "*LMA-card*".

CHILDREN OF UNDOCUMENTED MIGRANTS

Entitlements:

If rejected asylum seeker or children of rejected asylum seekers: Same as nationals.

Otherwise: no access free of charge to any care (payment of full cost). In addition, with the exception of emergency care, access could be denied because the law does not oblige to provide care or treatment.

Conditions:

- If children of rejected asylum seeker:
  - ➤ Show the expired "*LMA-card*".

DETENTION CENTRES

ADULTS

Access free of charge to "care that cannot be postponed", ante and post natal care, family planning, abortion, and dental care that "cannot be postponed[17].

Access to hospital care if needed[18].

CHILDREN

Access free of charge on equal grounds as nationals[19]. The time limit for detention is 72h extendable to another 72h if there are exceptional grounds[20].

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status: The municipal social welfare committee shall disclose information about an alien's personal situation if a police authority, the Swedish Security Service, the Swedish Migration Board, a migration court, the Migration Court of Appeal, or the Government requests this information, and the information is needed for a decision in a case concerning a residence permit or long-term resident status in Sweden for a third-country national or to enforce a refusal-of-entry or expulsion order. This also applies when the question has arisen of whether the alien has a right to residence[21].

17. Ibid, § 4 (3) and § 6

18. See Chapter 11, section 5 of *the Aliens Act (2005:716)* of 29 September 2005.

19. See § 5 of *the Lag (2008:344).*

20. See Chapter 10, section 5 of the *Aliens Act (2005:716).*

21. See Chapter 17, section 1 of the *Aliens Act (2005:716).*

NON EXPULSION FOR MEDICAL REASONS

RESIDENCE PERMIT FOR MEDICAL REASONS: "RESIDENCE PERMIT ON GROUNDS OF EXCEPTIONALLY DISTRESSING CIRCUMSTANCES"[22]

WHO ?

Only asylum seekers.

CONDITIONS:

- Submit an asylum application.
- No residence permit has been granted on other grounds (namely asylum or subsidiary protection).
- The overall assessment of the applicant's situation must show exceptionally distressing circumstances with particular attention to the state of health, his/her adaptation to Sweden and his/her situation in the country of origin. In his visit to Sweden in 2006, the UN Special Rapporteur on the Right to Health pointed out that in their assessment of "particularly distressing circumstances", migration courts should consider whether or not the individual, in practice, would be able to access life-saving treatment and not only the availability of the required treatment. The Rapporteur also recommended considering the accessibility of drugs, and he generally criticised the poor quality and limited approach to the question of availability of the reports issued by the Swedish Embassies in the applicants' countries of origin[23].
- For children: the circumstances do not need to have the same seriousness and weight that is required for adults.
- Decision made by the Swedish Migration Board after consulting availability and accessibility of the treatment in the country of origin in their own database[24].

DURATION:

Limited (if the sickness or need of care is temporary)[25] or permanent[26].

ACCESS TO HEALTH CARE:

The applicant has the status of an asylum seeker, therefore access to health care to "care that cannot be postponed", ante and post natal care, family planning, abortion, and dental care that "cannot be postponed.

22. See Chapter 5, section 6 of the *Aliens Act (2005:716)*.

23. See points 86-91 of the *Report of the Special Rapporteur* A/HRC/4/28/Add.2.

24. Database "LIFOS", see PICUM, *Undocumented and seriously ill:*, p. 47.

25. Chapter 5, section 9 of the *Aliens Act (2005:716)*.

26. "According to the Swedish Migration Board, a residence permit in humanitarian case is often granted on a permanent basis", see PICUM, *Undocumented and seriously ill*, p. 47.

RESIDENCE PERMITS FOR MEDICAL REASONS: "TEMPORARY OR PERMANENT RESIDENCE PERMIT IN CASE OF (NOT LASTING OR LASTING) IMPEDIMENT TO ENFORCE A REFUSAL-OF-ENTRY OR EXPULSION ORDER"

WHO ?

Seriously ill undocumented migrants

CONDITIONS:

After the final (not possible to further appeal) decision of refusal-of-entry or expulsion order, new medical circumstances come to light preventing the enforcement of the order or there is a reason to assume that "the alien would be in danger of suffering the death penalty or being subjected to corporal punishment, torture, or inhumane or degrading treatment or punishment"[27].

It is the decision of the Swedish Migration Board.

DURATION:

Limited (if the sickness or need of care is temporary) or permanent[28].

ACCESS TO HEALTH CARE:

As authorised residents, they receive a "personal number" and are granted access to health care on equal grounds as nationals.

27. Chapter 12, section 1 of the *Aliens Act (2005:716)*.

28. Chapter 12, section 18 of the *Aliens Act (2005:716)*.

IN PRACTICE

THE VISION OF MDM SWEDEN ABOUT THE SITUATION IN PRACTICE

Access to health care for undocumented migrants - adults and children:

The legislation does not recognise any access free of charge for undocumented migrants, with the sole exception of children of rejected asylum seekers or rejected asylum seeking children. Therefore, the biggest direct obstacle is the law in itself. Although the law does not recognise undocumented migrants' legal entitlements to accessing health care, it also does not prohibit providing medical services to them. Why then do medical staff not treat undocumented migrants in Sweden? It is often due to administrative and financial issues. In addition, since it is not required by law, the law does not motivate them to do otherwise. Similarly, the lack of knowledge on the side of health care providers sometimes leads to the misunderstanding that providing health care to undocumented migrants is a breach of law.

Medical staff often does not know how to handle the administrative routines for undocumented migrants when they seek health care. Everyone legally living in Sweden receives a personal identity number. This number facilitates administrative steps and it is always used in the health care system to register and to keep track of the patients. As undocumented migrants do not have a personal number, they do not exist in the health care system. This can result in denying treatment to a patient in need of care. A possible solution could be providing undocumented migrants "temporary numbers" (used for instance when a Swedish newborn child needs emergency health care and the administrative routines of providing a personal number has not yet been completed).

The financial aspect is another important issue, if not the largest. Undocumented migrants have the right to emergency healthcare, but they have to pay the whole cost themselves, which is often too expensive. Normally all patients are asked to pay before seeing a doctor, and if they cannot pay it is not guaranteed that they will get any treatment. It is possible for undocumented migrants to ask for an invoice to be sent to a given address, but few of them know about this possibility. Therefore, they end up not seeking healthcare.

Besides these issues, there are other indirect obstacles, including the fear of being reported to the police or to the migration board. A survey conducted in 2008 by *Médecins du Monde* Sweden in Stockholm[29] showed that the majority of interviewed undocumented migrants never went to the public health centers because of the fear of being reported. All Swedish public authorities including those working for the public health care system are bound by a duty of professional secrecy. Therefore it is illegal to report a patient, undocumented or not, to the police. The only exception to the applicable law is that the medical staff is obliged to answer a direct question made by the police if a named person

29. The *Second European Observatory Report of Médecins du Monde*, is published in September 2009.

is on the premises. This law is not well known by undocumented migrants and sometimes not even by medical staff in the sense that confidential information related to undocumented migrants should not be handled otherwise.

As for undocumented migrants, the lack of knowledge of their rights is also an obstacle. This aspect also became very clear in the survey conducted in 2008. Some of the interviewed patients thought they did not have any rights to healthcare at all, not even to emergency care (even if it is always on payment basis). These people never tried to seek healthcare, not even when they were in a critical situation.

HIV screening is accessible (anonymous and free of charge) for undocumented migrants. However, information and motivation are needed to increase access. Undocumented migrants cannot access HIV treatment free of charge.

Children encounter the same obstacles as adults. If they are failed asylum seekers or children of rejected asylum seekers, they have wider legal entitlements to access health care; however, their rights are overridden by the fact that their parents do not have any legal entitlement to access health care in Sweden free of charge. Their situation is closely related to their parents. Thus, the fear of being reported and the lack of knowledge about their rights are significant limitations preventing them to access healthcare.

The fact that Sweden has been criticized by the UN Special Rapporteur on the Right to Health (on the occasion of his visit to Sweden in 2006) for having a discriminating law and practice in this area has started a chain of events in terms of recognizing the importance to provide health care to undocumented migrants and the consequences of the restricted legislation.

The EU has also pointed out several times that Sweden should regulate by law access to health care for undocumented migrants and asylum seekers and not only through agreements between the government and the county councils. Although a new law has finally been passed in July 2008, this law has not changed anything in terms of access to health care for undocumented migrants. Their lack of rights remained the same. However, the whole process has reinforced networks, attracted the attention of the media, and created a debate among politicians. To some extent this attention has contributed to a heightened awareness among the general public, however the knowledge of this issue is still not enough.

In this context, several regional initiatives have been put in place to extend health care coverage for undocumented migrants. Some county councils, specific hospitals, and health care centers have started to develop their own policies to give a response to the consequences that the strict national legal framework have on health status and entitlements of undocumented migrants. One example is Skåne (in the southern part), where rejected asylum seekers get the same health care as asylum seekers. Another example of a regional

initiative concerns undocumented pregnant women in the Stockholm region that, from February 2009, have access to antenatal health care free of charge, not including delivery and post natal care. In Stockholm, the Karolinska University Hospital has agreed on deciding on a case by case basis, about treatment and follow up for all chronically and severe ill patients, meaning that undocumented migrants are to be included. At Sahlgrenska University Hospital in Gothenburg, they have made their own hospital policy to accept and treat undocumented migrants.

Despite all of these efforts, important difficulties have been reported concerning the effective implementation of these timid regulations. In addition, fear exists that these initiatives are taking place in a context of a health financial surplus and thus could disappear in case of shortage.

Access to health care in detention centres:

In Sweden, individuals confined in detention centers have the same rights to access health care as asylum seekers: subsidized access to emergency care, ante and post natal care, abortion and acute dental care. Illnesses, such as tuberculosis or hepatitis are not included unless the health situation of the patient is very serious. Similarly, there is not psychological support and not even psychiatric care unless the situation is considered an emergency. These restrictions have enormous consequences on the health of the detainees considering their distressing circumstances: no freedom of movement despite not having committed any criminal offence, forced migration due to war or poverty, rejected asylum claims, imminent expulsion from the host country.

Generally speaking, the provisions recognizing this right are not sufficient and a number of obstacles make access to health care in detention centers even more limited.

Access to health care in the detention center of *Kållered* outside Gothenburg: Detainees can access free of charge certain basic drugs that are available in the centers 24h/7: mild analgesics, drugs for coughing and stomach-ache or light sleeping pills. There is a regular presence of medical staff in the center for consultations, prescriptions and follow-up, however it is not provided on a permanent basis. In addition, health care providers are not always replaced during holidays or public holidays. This circumstance usually makes the waiting time longer for consultations. People retained could access some specialized care assuming that the nurse considers that this type of care falls under their entitlements. In emergency situation, they are taken to hospital. The lack of a permanent medical service entails that in many occasions it up to the general staff of the center (not doctors or nurses) to evaluate the gravity of a medical situation. In addition to the fact that the police can make wrong medical judgments, it might also be quite complicated for the police to transfer people to a hospital since they are obliged to comply with strict rules of transportation to go out from the centre.

Non expulsion for medical reasons:

The basic rule concerning the situation of seriously ill foreigners and residence permits on medical ground[30], according to the Migration Board, is that if the necessary medication and treatments exist in their country of origin, the Migration board will make the assessment that treatment is accessible to the patient and therefore a resident's permit on medical ground is dismissed. A thorough investigation based on whether this treatment is available to the patient or not is not something that is required to take into consideration in each case. Neither is the following up of each individual case. Obstacles in getting access to treatment, such as high costs and insurances, together with logistic issues are not taken into account.

There are exceptions to the circumstances above, one being dependent on social economic issues. The more unusual the illness or disease is, the more likely the person will get a residence permit in Sweden on medical grounds. This is because the individual case will not have a precedent, the chances of getting other similar cases are lower, and therefore the decision will be based on social economic value.

Another exception is if a person cannot handle the actual transportation because of medical reasons, meaning that if a person risks death during the deportation, the decision will be "stayed"
until he/she recovers to the extent so that he/she is able handle the actual deportation.

Another scenario that will postpone the deportation is if the flight company/ pilot will not accept a passenger because of their serious health condition. In these cases the Swedish State can charter airplanes in order to deport them to their country of origin. Obviously this only puts the problems to another flight company/ pilot who could argue the same. However, the State can use the Frontex agency[31].

Concerning seriously ill children[32]: "a slightly more generous approach" is required. However, for children there is a restrictive practice in these cases as well. When it comes to children under the age of 18, they are seldom being deported if no "addressee" is found in the country of origin such as relatives, etc. However, an orphanage can also be classified as an addressee, which is not an unusual case. What can happen is that they arrive as minors and then by the time the asylum process is over it has taken such a long time and they have turned 18. Then the decision can be carried out for them to be deported.

In Sweden there are several serious cases of children with "pervasive refusal syndrome". These children have lost contact with the surroundings and live in a condition of a dejected status[33]. Even in these cases it is very seldom that they will get a permit on medical grounds because the assessment made is that "treatment exists in their country origin". Also there is a lack of knowledge about this syndrome and the status of these children. Additionally,

30. In Swedish "När vård och mediciner finns att tillgå i hemlandet kan uppehållstillstånd inte beviljas på grund av synnerligen ömmande omständigheter även om utlänningen själv måste bekosta den nödvändiga behandlingen."

31. Frontex, an EU agency based in Warsaw that was created to coordinate the operational cooperation between Member States in the field of border security. They focus on six principal areas and one of them is to provide Member States with the necessary support in organising joint return operations.

32. In Swedish "avseende barns rätt att få stanna på grund av synnerligen ömmande omständigheter, kan man anlägga ett något generösare synsätt."

33. In Swedish sk uppgivenhetssyndrom, sällsynt traumatiskt stresstillstånd hos barn.

these children are seldom being interviewed, neither by the Migration Board and further at the next level by the Migration Court, nor by the doctors.

In Sweden, the proof burden lies on the party representing the person applying for a residence permit, and not the opposite part as it is for other legal cases within the Swedish legal system where "you are innocent until proven otherwise".
Obviously this means that there is a big responsibility placed upon the defending party of each case of completing a thorough and qualitative evaluation. The legal representative has a standard procedure for each case including a payment of 8 hours of work, something that will be paid by the Migration Board. If costs exceed the budget, something that can be caused by an assessment made by the legal representative that a further inquiry is needed to build up the case (e.g. a medical expert evaluation), the Migration Board will decide if the exceeding costs are legitimate or not in order for them to pay. Therefore the legal representative has a self interest of lowering the costs and not to go further with any uncertain inquiries that could jeopardise the budget, even though it could have been necessary to build up the medical case. Interpretation is often another very high cost that could be adjusted because of this reason. And of course, the "smaller" the language is, the harder it is to get an interpreter, and obviously this requires resources.

So if the legal representative decides on his/her own to go through with these measures anyway, either by paying from their own pocket or by working overtime, something that inevitably happens, the point is that the system in itself does not motivate a legal representative to jeopardize a budget comprised of only eight hours of work. For example, an inquiry made by the "Crisis and Trauma Center" (*Kris- och Traumacentrum*) for treatment of complex dissociative disorders is something that could have been necessary in terms of credibility in several medical cases. This measure is seldom used, as each inquiry costs approx 12 500 SEK (1 250 EUR). With reference to the circumstances above, this is highly problematic and it needs to be pointed out that Sweden has been convicted 12 times by the Committee Against Torture in Geneva for refusal of entry in cases of torture.

There are also some barriers in the officer's job at the Migration Board. They have to deal with a lot of cases in a short period of time. Time pressure is a fact, and the officers cannot spend too much time on each case, which means that they have to limit their time to review, compare, and verify all the information. But then again the proof burden lies on the defending party which could be seen as a way of avoiding the responsibility to assure that the data is verified. The officers at the Migration Board set a time frame for the defending party to come in with proof, or so called "new elements", for each individual case. This time frame limits the defending party of the applicant because if they do not manage to come in with proof in time, the application is refused.

Läkare i Världen - Sweden

UNITED KINGDOM

HEALTH SYSTEM

Although funded centrally from national taxation, National Health Service (NHS) services in England, Northern Ireland, Scotland and Wales are managed separately. While some differences have emerged between these systems in recent years, they remain similar in most respects and continue to be referred to as belonging to a single, unified system[1].

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

The National Health Service provides care which is free at the point of use, for anyone who is resident in the UK.

All residents in the UK, irrespective of their legal status, have free access to the following NHS services: i) services provided in an "accident and emergency department" (until the patient is admitted as an in-patient or an out-patient clinic, thus emergency treatment given elsewhere in the hospital) or walk-in centres in situation of emergency; ii) family planning; iii) services provided in the community where staff are not employed by a Trust (e.g. practice nurses); iv) treatment of certain communicable diseases, like tuberculosis (excluding HIV/AIDS where it is only the first diagnosis and connected counselling sessions that are free of charge); v) treatment given in or referred by sexually transmitted diseases clinics; and vi) compulsory psychiatric treatment.

To access NHS services (except for accident and emergency services), all residents must register with a General Practitioner (GP) within their residence area. GP's provide primary care and are the gatekeepers to accessing most secondary care.

Primary and secondary care is free of charge for nationals and **authorised residents (those who are "ordinarily resident[2]")**. However, not all NHS services are free of charge. At the primary care level, there are statutory NHS charges for prescriptions, dental treatment, sight tests, optical vouchers, travel costs to NHS services, and wigs and fabrics support, unless the person qualifies for partial or full exemption according to age, income and health conditions criteria[3].

1. Information provided in this country profile mainly refers to England.

2. The meaning of "ordinarily resident" has been determined by case law rather than legislation. Since April 2004, the definition of "ordinarily resident" had been reduced to legal residency, mainly refugees, asylum seekers and "persons who have resided lawfully in the United Kingdom for the period of not less than one year immediately preceding the time when the services are provided unless this period of residence followed the grant of leave to enter the United Kingdom for the purpose of undergoing private medical treatment or the determination under the regulation 6A". See Regulation 4 of the National Health Service (Charges to Overseas Visitors) Regulations 1989, as amended by Regulations 1991/438, 1994/1535, 2000/608, 2000/909, 2004/614 and 2006/3306 (hereinafter "the Regulations").

3 See Department of Health, HC11 "Help with health costs".

Treatment which is not deemed to be "immediately necessary" or "urgent" ("not immediately necessary but cannot wait until the patient returns to his/her country of origin") can be denied until a deposit or payment for the treatment has been provided[4].

Asylum seekers, considered "ordinarily resident", are however entitled to access free health care on equal grounds as nationals. They also have the possibility to be exempt from payment of NHS charges under the same conditions as nationals[5].
Undocumented migrants have access free of charge only to; i) primary care (if they manage to be included in the NHS patient list by a GP); ii) "immediately necessary treatment" given in an accident and emergency department or walk-in centre; iii) family planning; iv) treatment of certain communicable diseases (except HIV); and v) mental health sectioning for severe cases.

Before April 2004, anyone who has been living in the UK for one year even unlawfully was entitled to free NHS hospital treatment. Since April 2004, undocumented migrants are required to pay the full cost of any other hospital treatment or diagnosis including secondary care in outpatient department, in-patient care, ante and postnatal care provided in hospitals, medicines and ARV treatment. The speed of access to the care excluding antenatal care is dependent on the clinician's assessment on whether the treatment is "immediately necessary" or "urgent". If the treatment is considered "non urgent" ("routine elective treatment that can wait until the patient returns home within a medically acceptable time), they will be refused access to treatment and investigation until they pay the full cost in advance[6].
Antenatal care is excluded from the clinician's assessment because it is always recognised as 'immediately necessary' and will always be accessible. However, access to the services will be chargeable.

In April 2008, a High Court declared that refused asylum seekers have to be considered as "ordinarily resident" and thus entitled to secondary care[7]. However, this court ruling was appealed by the Department of Health and the Court of Appeal agreed that the latter was right and thus decided not to consider them as "ordinarily resident"[8].

The Department of Health will soon issue guidelines governing access to secondary care for those not considered ordinarily resident.

In April 2004, the government also proposed an amendment to the health regulations which would restrict access to primary care for undocumented migrants. In the same year, the government initiated a broad public consultation on the amendment. This proposal currently seems to have been abandoned by the government.

4. See Regulations 1-4 ("the Regulations") and Chapter 3 of the Guidance to the NHS Trust Hospitals in England given by the Secretary of State for Health on Implementing the Overseas Visitors Hospital Charging Regulations of 21 April 2004 as updated in 2007 (hereinafter "the Guidance").

5. See Regulation 4 ("the Regulations"); see also "the Guidance". Although the recent judgement of the Supreme Court has not questioned the actual entitlements of asylum seekers to access health care, it has however stated that "The words are to be given their ordinary meaning. Asylum seekers are clearly resident" but "while they are here under sufferance pending investigation of their claim they are not, in my judgment, ordinarily resident here. Residence by grace and favour is not ordinary" (see point 61 of the judgment of the Supreme Court of Judicature -Court of Appeal (Civil Division) of 30 March 2009 [2009] EWCA Civ 225).

6. See Regulations 1-4 ("the Regulations"), Chapter 3 of "the Guidance" and points 63-78 of the judgment of 30 March 2009.

7. See ruling R(A) – v– *Secretary of State for Health (defendant) and West Middlesex University Hospital NHS Trust (interested party)*.

8. See judgement of the Court of Appeal (Civil Division) of 30 March 2009 [2009] EWCA Civ 225.

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

- Only in accident and emergency departments of hospitals or walk-in centre providing similar services to those of an accident and emergency department of a hospital (it is the location and not the type of treatment that determines any charges for care).

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

- To be included in a NHS patient list by a General Practitioner[9] (in practice they are requested to provide name, address, date of birth, and telephone number). If the GP refuses to register, the local Primary Care Trust will assign the patient to a practice; and
- Previous referral by the GP to access secondary care.

9. About the discretion of GP's to register patients in their catchment area as long as they do not discriminate, see Schedule 6 § 17 of the NHS (GMS Contracts) Regulations 2004.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Access free of charge ONLY for primary care.
No access free of charge for secondary care (payment of full cost).

Conditions:
Same as nationals but it is dependent of discretion of GPs to register the patient.

HOSPITALISATION (INPATIENT CARE)

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:
- To be registered as an NHS patient by a GP; and
- Previous referral by the GP or through the recommendation of a doctor in emergency care.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements
NO access free of charge (payment of full cost).

ANTE AND POST NATAL CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge (hospital antenatal clinics and/or midwives in the community).

Conditions:
No particular conditions required.

ASYLUM SEEKERS

Entitlements:
Same as nationals.

Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
No access free of charge in hospitals (but care is provided free of charge by midwives in the community).

Conditions:
- Care provided by hospital antenatal clinics:
  - ➤ Payment of full cost.
- Care provided by midwives in the community:
  - ➤ To be registered as an NHS patient by a GP.

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access co-paid (payment a statutory charge).

Conditions:
- ➤ Pay the prescription (a flat-rate fee of 8.23 €)[10] unless exempt[11]. No payment requested for medicines given in hospitals and walk-in centres, contraception treatments and treatment of certain communicable diseases (except HIV).

10. Patients who have to pay for more than 5 prescription items in four months or 14 items in twelve months can reduce their cost by buying a pre-payment certificate (PPC).

11. People who: are aged 60 or over; are under 16 (or 18 if they are in full-time education); are pregnant women or women who had a baby in the previous 12 months and have a valid exemption certificate; have a listed medical condition and a valid exemption certificate; have continuing physical disability that prevent them from going out on their own; are an NHS in-patient; are getting certain income support; are entitled to NHS tax credit exemption; have a valid HC2 certificate; or are a war pensioner. See HC11 "Help with health costs".

ASYLUM SEEKERS

Entitlements:
Same as nationals.
Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.

Conditions:
Same as nationals (however they are unlikely to get prescriptions of specialised drugs due to entitlements).

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Screening anonymous and free of charge in designated clinics.

Conditions:
No particular conditions required.

ASYLUM SEEKERS

Entitlements:
Same as nationals.
Conditions:
Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:
Same as nationals.
Conditions:
Same as nationals.

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:
Access free of charge.

Conditions:

- To be registered as an NHS patient by a GP; and
- Previous referral by the GP or through the recommendation of a doctor in emergency care. Treatment is monitored by the GP and a HIV specialist.

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

No access free of charge (payment of full cost).

TREATMENT OF OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge for 35 diseases[12].

Conditions:

- To be registered as an NHS patient by a GP; and
- Previous referral by the GP or through the recommendation of a doctor in emergency care.

However, some treatment is available through designated sexual health clinics.

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

12. For the list of diseases, see www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4080313.

CHILDREN

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge to all types of health care. Children under age 16 (or under 18, if they are in full-time education), are exempted from paying medicine prescriptions, dental treatment, optical vouchers, NHS travel costs, and wigs and fabric supports.

Vaccination: No vaccination is compulsory. Some are recommended[13].

Conditions:

- To be registered as an NHS patient by a GP and usually have parents also registered on the same list.

ASYLUM SEEKERS' CHILDREN

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNACCOMPANIED ASYLUM SEEKING CHILDREN

Entitlements:

Same as nationals.

Conditions:

- To be registered as an NHS patient list by a GP.

UNACCOMPANIED (MIGRANT) CHILDREN

Entitlements:

Same as nationals until the age of 18 because they are granted either asylum or a discretionary leave.

Conditions:

Same as nationals (they always apply for asylum).

CHILDREN OF UNDOCUMENTED MIGRANTS

Entitlements:

Access free of charge ONLY to primary care (if they are able to register as an NHS patient with a GP), emergency or immediately necessary medical treatment given in an accident and emergency department or walk-in centre, treatment of certain communicable diseases (except HIV) and mental health for severe cases.

No access free of charge for a any other hospital treatment or diagnosis including secondary care in out-patient department, in-patient care, ante and postnatal care, medicines and ARV treatment (payment of full cost).

13. For the list of recommended vaccinations, see www.netdoctor.co.uk/health_advice/facts/childhoodvaccinations.htm.

Conditions:

- To be included in a NHS patient list by a general practitioner and usually have parents also registered on the same list.

DETENTION CENTRES

ADULTS

Access to physical and mental health care free of charge only if care is provided by the detention centre's health care team (otherwise they are chargeable). The health care team will respect medical confidentiality, will pay special attention to recognise medical conditions and the cultural sensitivity and endeavour to receive all medical records relating to detained persons. All detained persons shall be entitled, if they so wish, to be examined only by a registered medical practitioner of the same sex.

Every detained person shall be given a physical and mental examination by the medical practitioner upon consent (unless requested by a custody officer for public health reasons) within 24 hours of his admission to the detention centre.

The medical practitioner shall report to the manager (who will report to the Secretary of State) on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention, including victims of torture[14].

14. See points 33-37 of the Statutory Instrument 2001 No. 238, The Detention Centre Rules 2001.

CHILDREN

They can be retained in "immigration removal centres" if accompanied by their families[15]. Same access to health care as adults.

15. Unaccompanied children and pregnant women (except in exceptional circumstances) cannot be detained. See point 11 of the Statutory Instrument 2001 No. 238.

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status: The duty of confidentiality is a legal obligation that is derived from case law; a

requirement established within professional codes of conduct; and must be included in NHS employment contracts as a specific requirement linked to disciplinary procedures. Information that can identify individual patients must not be used or disclosed for purposes other than health-care without the individual's explicit consent, some other legal basis, or where there is a robust public interest or legal justification to do so for instance in order to prevent and support detection, investigation and punishment of a serious crime[16].

NON EXPULSION FOR MEDICAL REASONS

RESIDENCE PERMIT FOR MEDICAL REASONS: "DISCRETIONARY LEAVE ON ARTICLE 3 MEDICAL GROUNDS"[17]

WHO ?

- Refused asylum seekers who are severely ill ("asylum cases") or other severely ill undocumented migrants (non-asylum or non-protection cases).

CONDITIONS:

- For asylum-cases: The person must not qualify for refugee status or Humanitarian Protection.
- For non-asylum cases: The person must not qualify for other residence permit under the Immigration Rules.
- Removal would amount to inhumane or degrading treatment owing to the acute suffering because of that person's medical condition. Neither an enforced nor voluntary return is possible without material prejudice to the right protected.
- Only in truly exceptional cases involving extreme circumstances. The extremely high threshold of Article 3 of the European Convention on Human Rights is met according to national and European case-law. The fact that the applicant is suffering from a distressing medical condition (e.g. a condition which involves a limited life expectancy or affecting their mental health), may not, in itself, be sufficient to meet this threshold. Discretionary Leave should not be granted if the claimant could avoid the risk of acute suffering by leaving the UK voluntarily.
- Unlike access to treatment in the country of origin[18] .
- The asylum cases where a grant of Discretionary Leave is proposed must be referred by caseworkers to a senior caseworker for approval.

16. The definition of serious crime is not entirely clear. Murder, manslaughter, rape, treason, kidnapping, child abuse or other cases where individuals have suffered serious harm may all warrant breaching confidentiality. Serious harm to the security of the state or to public order and crimes that involve substantial financial gain or loss will also generally fall within this category. In contrast, theft, fraud, or damage to property where loss or damage is less substantial would generally not warrant breach of confidence. See Department of Health, "Confidentiality: NHS Code of Practice", November 2003.

17. See Article 3(1)(b) of the Immigration Act of 1971; See Asylum Policy Unit (APU) Notices "Applications raising article 3 medical grounds" of 20 October 2003, "Exceptional Leave, Humanitarian Protection and Discretionary Leave" of 1 April 2003 and "Humanitarian protection and Discretionary Leave" and Asylum Policy Instruction "Discretionary Leave".

18. Information on the availability of treatment in the country of origin should be obtained from CIPU and from NCC5 of the Managed Migration Directorate (the CMU dealing with all non-asylum applications for LTR on the basis of HIV infection or other life-threatening medical conditions).

DURATION:

Three years unless there are clear reasons for granting a shorter period[19]. Extensions can be granted. After completing six[20] years' leave, they will be eligible to apply for ILR/settlement.

ACCESS TO HEALTH CARE:

Same as other authorised residents.

RESIDENCE PERMIT FOR MEDICAL REASONS: "LEAVE OUTSIDE THE RULES"[21]

WHO ?

Severely ill undocumented migrants.

CONDITIONS:

- The person must not qualify for leave under the Immigration Rules, the Humanitarian Protection or Discretionary Leave criteria.
- It will be necessary to consider granting this leave in mainly non-asylum and non-protection cases only in two circumstances: i) where someone does not qualify under one of the immigration policy concessions; or ii) for reasons that are particularly compelling circumstances. "Particularly compelling circumstances" cases should be rare, and only for genuinely compassionate and circumstantial reasons or where it is deemed absolutely necessary to allow someone to enter/remain in the UK, when there is no other available option.
- It is a discretionary decision by the Secretary of State or an immigration officer. All proposed grants should be referred to and agreed to by a Senior Case Worker/Inspector.

DURATION:

Indefinite or limited duration with possibility of extension. The specific period will depend on the individual circumstances of the case and only for the necessary duration of stay required. Indefinite leaves only because the particular compelling circumstances of the individual case are such that it is almost certain that there will be no change in circumstances within five years.

ACCESS TO HEALTH CARE:

Same as other authorised residents.

19. Examples may include where the applicant is undergoing a course of treatment of a finite duration or is awaiting surgery, after which Article 3 barriers may no longer apply. In addition, where it is considered that return would be possible within six months of the date of decision it will normally be appropriate to refuse the claim outright, not to grant a period of Discretionary Leave, and to defer any removal until such time as it is possible.

20. In excluded cases (whenever there are serious reasons for considering that the applicant has committed a crime against peace; he/she constitutes a danger to the community, etc) he/she must complete ten years before being eligible to apply for settlement. See APU Notices "Applications raising article 3 medical grounds", "Discretionary Leave" and "Humanitarian Protection".

21. See Immigration Directorates' Instructions "Chapter 1 Section 14 Leave Outside the Rules (LOTR)", April 2006.

IN PRACTICE

THE VISION OF MDM UNITED KINGDOM REGARDING THE SITUATION IN PRACTICE

Access to health care for undocumented migrants - adults:

Access to primary care is at the discretion of the general practitioner (family doctor) so all undocumented migrants should be able to register and access free healthcare. However, general practitioners (GP) can refuse to register someone at their own discretion or on the basis of catchment area, but they must not discriminate on the grounds of race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition when they refuse. if documents are not statutorily required for registration, we have found in practice that some GP surgeries will ask for proof of address or will ask for proof of ID or for proof of legal residency. Each GP surgery will have its own criteria on what documents they ask for and how many documents are required. Some GP surgeries do not require any documentation and will therefore not be aware of someone's immigration status.

Access to secondary care is through primary care, but there are clear regulations on who can access free secondary care. In practice, some hospitals will not identify undocumented migrants because they have been registered with a general practitioner for a long period of time. They can refuse undocumented migrants if they discover that they are meant to be charged but they cannot afford to pay.

A number of patients have been charged when they have attempted to access antenatal care services. Some hospitals will focus their attention on undocumented migrants in certain departments such as antenatal care. Antenatal services cannot be refused but the patient can be charged. The Overseas Payment Officer will interview the patient for charging and may intimidate the patient so that they are reluctant to return for further care.

Furthermore, some hospitals may notice that someone has recently registered with a general practitioner (family doctor). Therefore they may interview that person in order to inquire as to whether this person is an overseas visitor and potentially chargeable. They may deny them further treatment until they pay. The practice also shows that the policy of hospitals is not uniform. Some hospitals check the immigration status of migrants more than others.

Finally, patients who end up accessing emergency services can be charged for any care they receive if they have become an inpatient (admitted for further tests and care). There have been a few cases where undocumented migrants have been denied access to the emergency services because the health has not been deemed an emergency.

Access to health care for asylum seekers - adults:

Access to primary care and secondary care is free and they should not be refused any care. In practice, GP surgeries will refuse to register asylum seekers until they bring in their passport, and some others will refuse to register them if they are not in

stable and secure accommodation with documents to prove they are a resident at that address. Furthermore, some health services do not provide interpreting services, so this makes it very difficult for someone to get the help they need.

Access to health care in detention centres[22]:

Official figures state that about 30,000 people are detained each year. There is no limit on how long a person may be held in detention and in some cases detention can be for years at a time. A large proportion of those held in detention does not have legal representation, and are not entitled to legal aid.

Medical services for those in detention are very restricted; they lack the range of expertise required for the medical conditions detainees suffer and in Medical Justice's experience the care provided is frequently inadequate, neglectful and even abusive. The Home Office, with whom ultimate responsibility lies, did not employ any doctor to give advice on healthcare in immigration detention centers until the intervention of "Medical Justice", a British organisation challenging medical abuse in immigration detention centres in the United Kingdom.

Operation of seven out of the ten "removal centres" is sub-contracted by the Home Office to private profit-making companies such as "Global Solutions Ltd" or «Serco Ltd". They in turn may sub-contract healthcare to a second private profit making company. The other three "removal centres" are converted criminal prisons, run by the Prison Service and healthcare responsibility lies with the National Health Service.

In the opinion of "Medical Justice", the health needs of detainees are not met and detention itself is profoundly damaging to their health status. In addition, detention of torture survivors, children, and those with physical or mental ill health is unjustifiable, contrary to the Home Office's own policy, and should cease.

At present the medical services in detention centres rarely have the capacity or expertise to deal with the wide range of serious mental and physical conditions presented by detainees. The consequences for those individuals can be grave. Detainees are commonly suffering from anxiety, depression, post traumatic stress disorder and serious mental illnesses which can be perpetuated or exacerbated by detention. In some cases, infectious diseases, like tuberculosis or HIV-AIDS, have been undiagnosed until "Medical Justice" doctors have intervened. Many detainees from sub-Saharan Africa suffer from HIV/AIDS and are in dire need of anti-retroviral treatment.

The doctors of "Medical Justice" are frequently involved in diagnosing the medical needs of detainees, which have often not been identified. They are also successfully encouraging the Home Office to adopt a policy of providing vaccinations and prophylaxis against malaria to young children prior to removing them from Sub-Saharan Africa and other risk areas[23].

Médecins du Monde (Doctors of the World) - UK
Medical Justice

22. This section has been written by the NGO Medical Justice www.medicaljustice.org.uk

23. See Medical Justice, Beyond Comprehension and Decency: A Report on Medical Abuse in Immigration Detention, July 2007.

CONCLUSION

In the European Union, the organisation and delivery of medical services is a national competence and therefore greatly differs from country to country. Undocumented migrants' and asylum seekers' legal entitlements to access health care depend on each Member State since EU countries are also competent to determine who benefits from the public health system. In many Member States, the power of health issues is shared among the central government, the regions and the local entities, leading to significant differences regarding rights and implementation even within a particular country.

Most countries provide asylum seekers - at least potentially - the same level of health coverage as they do for the rest of the national population. There are, however, two remarkable exceptions among the targeted countries: Germany and Sweden, where asylum seekers receive a reduced health coverage independent of the length of stay (Sweden) or during the first four years of residence (Germany).

As it is the case for undocumented migrants, asylum seekers face important practical barriers to access effective health care in all Member States due to lack of information, lack of time, economic precariousness or language and cultural constraints..

The scenario for undocumented migrants is much worse. They are often discriminated by the law regarding their rights as well as the administrative conditions to exercise entitlements. In some countries, like Sweden, they do not have free of charge access to any health care, even in the case of emergency or pregnancy. In other countries, such as Germany, the already limited entitlements are completely overridden by the obligation to denounce, imposed by the legislation on all public administrative institutions including the social welfare centres which have competence on health administration issues. Some other countries give some protection but leave aside vital care such as ante-post natal care or HIV treatment (e.g. United Kingdom).

This research has corroborated that the right to access health care of undocumented migrants and thus their right to health is not guaranteed in the EU. The existing discriminatory legal frameworks and enormous barriers in practice reveal that no country actually succeeds in ensuring that they enjoy "the highest attainable level of physical and mental care," as it is recognised by the main international Human Rights instruments. This should be the reference standard of protection to measure the degree of accomplishment of the different national legislations and policies.

This study has also confirmed the generalised tendency in all EU countries to restrict undocumented migrants' entitlements to access health care and to look at health as an instrument serving immigration control purposes rather than as a human right to protect. Countries with a long history of receiving migrants, such as the UK, Germany and the Netherlands, have generally pioneered this approach and which unfortunately, are being imitated on an increasing basis by new immigration countries, such as Italy. In addition, some countries for whom immigration has only been a very recent feature, such as Malta, have found themselves ill-equipped to deal with the phenomenon and generally have no applicable legislation in place.

The following examples illustrate this trend:
Germany: In 1997 the laws reduced entitlements to health care services compared to regular health insurance coverage for asylum seekers and undocumented migrants. In addition, in 2004, the duty to denounce undocumented migrants and the penalisation of assistance were introduced.

Netherlands: Before 1998, undocumented migrants were entitled to get insured in order to access health care on equal grounds as nationals. Now, they can only access "medically necessary care".

United Kingdom: Since 2004, undocumented migrants do not have any more free access to some hospital treatments or diagnoses including secondary care, inpatient care, ante-post natal care, medicines and HIV treatment. Additionally, the government is also trying to exclude primary care.

Italy: Although the phenomenon of immigration is rather new, there has already been an attempt (finally not passed) to significantly restrict access in 2008 through a proposal that seeks to make undocumented migrants pay for health care and intends to oblige health care providers to denounce undocumented migrants to immigration authorities.

Sweden: In 2008, the first law mentioning undocumented migrants was passed. Its only purpose was to formally exclude undocumented migrants from any health care free of charge. There was also an attempt to introduce a formal prohibition to provide health care to them.

In this context, **EU institutions** are mostly silent in regards to undocumented migrants' healthcare needs. Despite the fact that they do not have a transferred competence to regulate this issue, they do not use their general recommendation powers to give visibility to this serious problem. Even when they have the necessary legal basis to adopt measures, they continue adop-

ting timid legislation such as the *Directive laying down minimum standards on reception conditions for asylum seekers* (currently in amendment process) that only recognises for asylum seekers "necessary health care which shall include, at least, emergency care and essential treatment of illness."

The lack or insufficient access to health care for asylum seekers and undocumented migrants is a very serious subject which may only be brought to light, at governmental level, in the aftermath of any future experience with substantial consequences on general public health. Despite acknowledging the urgent priority to respond to this problem for public health considerations, the HUMA network stresses that the provision of health care is not an act of generosity but the path to comply with international (and most of the time constitutional) human rights legal obligations by member states.

A significant number of asylum seekers and undocumented migrants are actually living in Europe and governments cannot close their eyes to their presence and the protection of their basic needs that they should be entitled to as human beings. This protection should be extended with no delay to those asylum seekers and undocumented migrants confined in legally opaque detention centres throughout Europe given the extremely poor living and health conditions to which they are subjected.

In line with this vision, the HUMA network pursues efforts to continue providing testimony and advocating the right to health of two of the most marginalised groups in Europe. The second report of the European Observatory of *Médecins du Monde*, which is published in September 2009, and the second part of this report (including an overview relating to nine additional countries) will continue this most urgent and important task.

RECOMMENDATIONS

The members of the HUMA network demand equal access to health care, treatment and prevention for all people living in Europe without any discrimination on the basis of legal status or financial means. Health policies must not be constrained by immigration policies.

General Recommendations

The HUMA network claims the necessity for:

- Effective access to health care and prevention for undocumented migrants and asylum seekers on equal grounds as nationals with the same level of resources;
- Addressing the specific needs of vulnerable groups (pregnant women, children and victims of torture) and providing immediate access to prevention and care.
- Granting a permit/authorisation to stay to seriously ill undocumented migrants and protecting them against expulsion when they are unable to receive effective access to treatment in their country of origin.
- Effective access to health care to foreigners confined in detention centres and permanent access to detention centres by NGOs.

Recommendations to the EU institutions

Based on the outcomes of this report and the current policy context at EU level, the HUMA network makes the following general recommendations addressed to the European institutions.

Specific recommendations at a national level will also be made by each member of the HUMA network and directly addressed to their national/regional/local competent authorities. The list of national recommendations will be available at www.huma-network.org.

To the European Commission:

- Promote the adoption of EU legally binding norms providing for non-discriminatory access to health care for undocumented migrants.
- Adopt a Communication (Directorate Generals Health and Consumer Protection and Justice, Freedom and Security) to give visibility to the problems linked to lack or insufficient access to health care for undocumented migrants in the EU and propose specific action to be taken by EU institutions and Member States to address this issue;
- Make recommendations to Member States to take specific steps to improve access to health care for undocumented migrants and asylum seekers in the EU;
- Promote access to health care on equal grounds as nationals for asylum seekers in the framework of the re-negotiations on the reception directive[1].

To the European Parliament

- Adopt a Resolution setting up the principles that should govern access to health care for undocumented migrants and asylum seekers in the EU, namely, non-discriminatory access to health care, no duty to denounce undocumented migrants and no penalisation of assistance to undocumented migrants.
- Promote access to health care on equal grounds as nationals for asylum seekers in the framework of re-negotiations of the reception directive[2].

To the Economic and Social Council

- Promote the protection of undocumented migrants' and asylum seekers' rights and in particular the right to health care in the framework of the Integration Forum.

1. Directive 2003/9/CE 27/01/03.
2. ibid

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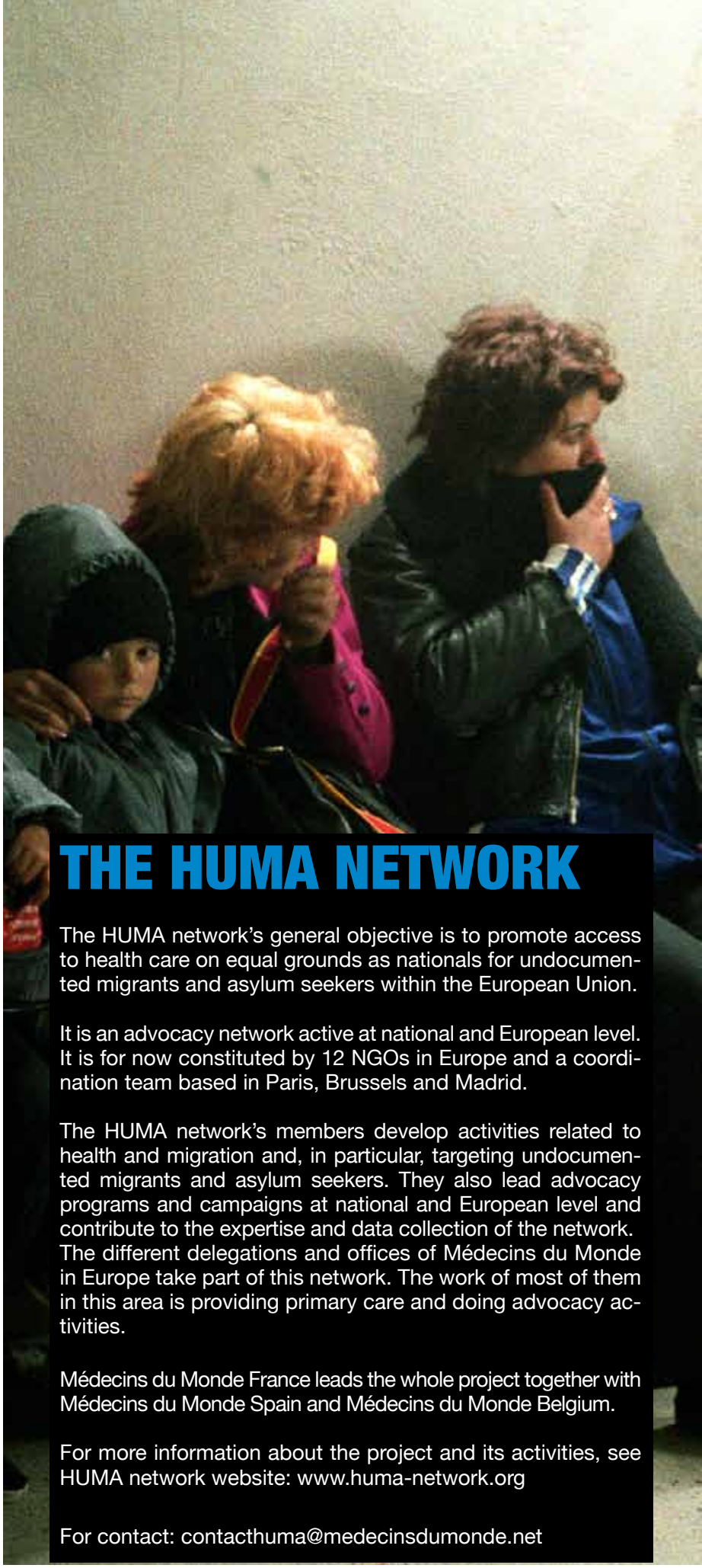
This report seeks to provide an updated overview of the different systems regulating access to health care for undocumented migrants and asylum seekers in ten Member States (Belgium, France, Germany, Italy, Malta, the Netherlands, Portugal, Spain, Sweden and the UK) and show the existing discriminations in regards to legal entitlements.
It also deals more specifically with health care entitlements for individuals confined in detention centres and the residence permits or other mechanisms established by national legislations to protect seriously ill undocumented migrants and asylum seekers who cannot effectively access treatments in their home countries against deportation.

In 2011, the HUMA network will publish an updated version of this report covering the situation in four additional countries: Cyprus, Greece, Poland and Romania.



THE HUMA NETWORK

The HUMA network's general objective is to promote access to health care on equal grounds as nationals for undocumented migrants and asylum seekers within the European Union.

It is an advocacy network active at national and European level. It is for now constituted by 12 NGOs in Europe and a coordination team based in Paris, Brussels and Madrid.

The HUMA network's members develop activities related to health and migration and, in particular, targeting undocumented migrants and asylum seekers. They also lead advocacy programs and campaigns at national and European level and contribute to the expertise and data collection of the network. The different delegations and offices of Médecins du Monde in Europe take part of this network. The work of most of them in this area is providing primary care and doing advocacy activities.

Médecins du Monde France leads the whole project together with Médecins du Monde Spain and Médecins du Monde Belgium.

For more information about the project and its activities, see HUMA network website: www.huma-network.org

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MINISTERIO DE TRABAJO E INMIGRACIÓN
SECRETARÍA DE ESTADO DE INMIGRACIÓN Y EMIGRACIÓN
DIRECCIÓN GENERAL DE INTEGRACIÓN DE LOS INMIGRANTES

Executive Agency for Health and Consumers

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