



Health for Undocumented Migrants  
and Asylum seekers

# **ACCESS TO HEALTH CARE FOR UNDOCUMENTED MIGRANTS AND ASYLUM SEEKERS**

LAW AND PRACTICE

**GERMANY**

# 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<sup>1</sup>. 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)<sup>2</sup>. 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<sup>3</sup>. Finally, they have free access to anonymous counselling and screening of tuberculosis and sexually transmitted diseases, including HIV/AIDS<sup>4</sup>.

With the exception of situations of real emergency<sup>5</sup>, asylum seekers in need of care have to apply first for a "*Krankenschein*"<sup>6</sup> 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<sup>7</sup>.

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". Traumatized people also have the possibility to access "appropriate care"<sup>8</sup>.

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 *länder*, 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*.

Asylum seekers who are required 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<sup>9</sup>.

**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<sup>10</sup>. 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 examining 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<sup>11</sup>. 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.

9. See Section 62.1 of the *Asylverfahrensgesetz -AsylVG* 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”.

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 undocumented 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<sup>12</sup>.

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<sup>13</sup>.

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 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 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).

### Conditions:

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

## 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.

**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 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 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 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 (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 6 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 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 (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

### Entitlements (screening):

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: no particular conditions required.
  - ▶ 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)<sup>14</sup>.

### 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).

14. For the list of vaccinations, see Robert Koch Institut: [www.rki.de/cn\\_091/nn\\_199596/DE/Content/Infekt/Impfen/Impfempfehlungen/Impfempfehlungen\\_node.html?\\_nnn=true](http://www.rki.de/cn_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<sup>15</sup>. 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<sup>16</sup>.

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<sup>17</sup>.

## 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”<sup>18</sup>. 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<sup>19</sup>.

15. “Some *länder*s like Bavaria apply the general legislation on detention. Others, like Berlin, have specific regulations on detention centres.

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

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

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

19. 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”<sup>20</sup>

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.<sup>21</sup> 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<sup>22</sup>.

### DURATION:

► Six months maximum<sup>23</sup>, 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”<sup>24</sup>.

### 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”<sup>25</sup>

### WHO ?

Severely ill undocumented migrants.

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

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

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

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

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

25. See § 23a of the *AufenthG*.

**CONDITIONS:**

- ▶ Urgent humanitarian or personal grounds must justify the foreigner's continued presence in the Federal territory"<sup>26</sup>.
- ▶ The applicant must have an enforceable order of expulsion (no possibility of appeal)<sup>27</sup>.
- ▶ The applicant must have not committed any offence of considerable severity<sup>28</sup>
- ▶ 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<sup>29</sup>.

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<sup>30</sup>.

**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"<sup>31</sup>

**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

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

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

28. *Ibid*.

29. 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.

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

31. 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<sup>32</sup>.

#### 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"<sup>33</sup>.
- ▶ 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

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

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

severity; iii) is guilty of acts contrary 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 of 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<sup>34</sup>.

#### **ACCESS TO HEALTH CARE:**

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

34. 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.”<sup>35</sup>*

35. 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 offers are sometimes targeted to children. 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 a severe illness than cannot be treated in their countries of origin.

This information refers to residence permits on humanitarian grounds. Residence permits in cases of hardship only concern potentially persons who cannot get other residence permit on other legal grounds and it implies to claim an additional reasons 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 (in Munich among other places) eight weeks before and eight weeks after giving birth. This is used above all if there exists a right to residence for the mother after the birth of the child.

***Artze Der Welt - Germany***

The first report of the HUMA network, available on [www.huma-network.org](http://www.huma-network.org), 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 nine additional countries: Austria, Czech Republic, Cyprus, Finland, Greece, Hungary, Poland, Romania and Slovenia.



«The views expressed in this publication are the sole responsibility of the author and do not necessarily reflect the views of the Executive Agency for Health and Consumers (EAHC). Neither the EAHC nor any person acting on behalf of the EAHC is responsible for the use, which might be made of this». «This publication arises from the project HUMA network which has received funding from the European Union, in the framework of the Public Health Programme 2003-2008.»

## 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 European NGOs, including the delegations and offices of Médecins du Monde 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.

Médecins du Monde France leads the whole project together with Médecins du Monde Spain and Médecins du Monde Belgium.

For more about the project and its activities, see HUMA network website: [www.huma-network.org](http://www.huma-network.org)

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