



Health for Undocumented Migrants
and Asylum seekers

ACCESS TO HEALTH CARE FOR UNDOCUMENTED MIGRANTS AND ASYLUM SEEKERS

LAW AND PRACTICE

BELGIUM

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 practitioner².

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. Besides this very specific case, they can also access free of charge all health care that is considered “necessary for everyday life” (“*relevant de la vie quotidienne*”) or included in the “INAME Nomenclature” with the exception of care that is “manifestly unnecessary” (“*manifestement 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 centre⁴ where they registered after arrival. If they live in one of these centres, the centre will directly pay the medical expenses⁵. 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 doctor⁶.

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 education⁷.

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 doctor⁸. 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 range 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, *Fedasil* 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 patient⁹.

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 payment¹⁰.

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 nature¹¹.

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 illness¹².

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 hospitals¹⁴).

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.

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, pharmacotherapeutic 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.

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS**Entitlements:**

Access co-paid by the patient and the health insurance fund¹⁵.

Conditions:

- ▶ To have the “compulsory health insurance” and show the “health insu-

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 centres¹⁶: 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 compulsory¹⁷.

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 insurance 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 unaccompanied¹⁸.

- 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 n° 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.

Conditions²¹:

- ▶ 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 expenses²².

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 receive 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 et 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 migrants²³.

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 adequate²⁴.
- ▶ 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 permanent²⁵.

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 VISAS²⁶

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 process²⁷ 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 *ONE (Office de la Naissance et de l'Enfance)* 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

The first report of the HUMA network, available on 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

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