

Our ref: DE-1415485

Dear Ms Hawkins,

Thank you for your correspondence of 30 June concerning individuals who apply late to the EU Settlement Scheme (EUSS), and the interaction with the National Health Service (Charges to Overseas Visitors) Regulations 2015, as amended. I have been asked to reply and I apologise for the delay.

I appreciate your concerns.

The NHS is a residency-based system. This means that people who do not live here on a lawful, settled basis must contribute to the cost of their care - whether that be individually, through the immigration health surcharge, or through a reciprocal healthcare arrangement with their government - unless an exemption applies. All chargeable visitors to the UK from 1 January 2021 pay the same 150% rate for NHS healthcare, irrespective of where in the world they live. Some groups are fully exempt from charges, including those who are particularly vulnerable.

Citizens of an EU country, Iceland, Norway, Liechtenstein and Switzerland, and their family members, who were lawfully residing in the UK by 31 December 2020, retain their right to healthcare on the same basis as UK residents, as long as they meet the relevant 'ordinary residence' test. Since 1 July 2021, in order to meet this test, they must have been granted settled or pre-settled status under the EUSS. In addition, individuals, including joining family members, who have made a valid application to the EUSS (evidenced by a Certificate of Application (CoA)) which remains outstanding, are not subject to NHS charges from the date of their application until the outcome is determined by the Home Office, or following their appeal.

You have requested that policy and legislation are reviewed so that any individual (whether they are a joining family member or not) who submits a late application to the EUSS, is considered to have reasonable grounds for a late application, and is ultimately granted status under the EUSS, is refunded for all NHS treatment charges incurred after 30 June 2021. Since 1 July 2021, an individual, including a joining family member, who is eligible to apply to the EUSS but who has not submitted an application is chargeable for healthcare. If they receive and pay for relevant services, and then later make an EUSS application which is granted, they will not be refunded for the treatment provided before the valid application was made. For joining family members this would include any treatment provided after the first three months of their arrival in the UK and before the date they submitted their late application – further detail is in the final paragraph of this letter.

The department (DHSC) has issued guidance to the NHS which makes clear that where charges have already been paid by an individual for treatment they received after they have made a valid EUSS application, they must be refunded by the relevant body. This also applies to joining family members. The guidance also makes clear that urgent or immediately necessary care may never be withheld or delayed for reasons to do with charging. Some NHS care continues to be available to all without charge, such as primary care, A&E services and treatment of infectious diseases.

This guidance can be found at <https://www.gov.uk/government/publications/overseas-nhs-visitors-implementing-the-charging-regulations>.

Under Article 18(3) of the Withdrawal Agreement, and equivalent provision in the other Citizens' Rights Agreements, joining family members who submit a late valid EUSS application, are afforded the same temporary protection as other late applicants, and therefore are treated as non-chargeable for healthcare from the date of a valid application, as evidenced by a CoA. This is now reflected in the latest version of the DHSC guidance.

The Home Office continues to provide a range of support for applicants, including those who are vulnerable or who need support to apply online. Since the EUSS opened in March 2019, the Home

Office has undertaken a broad range of communications and stakeholder engagement activity to encourage eligible EU, EEA and Swiss citizens and their family members to apply for status under the EUSS. Extensive, and regularly updated information, factsheets and leaflets on the EUSS have also been made available on [GOV.UK](https://www.gov.uk). The Home Office has also made available more than £27 million in funding for a network of organisations across the UK, which continues to provide support to vulnerable applicants and includes charities, local authorities and local government associations.

DHSC has also published information on [GOV.UK](https://www.gov.uk) and [NHS.UK](https://www.nhs.uk) that includes messages continuing to encourage eligible people to apply to the EUSS to secure their healthcare entitlements for the future.

In addition to exemptions from charges and provisions for immediately necessary and urgent treatment, DHSC's guidance to the NHS sets out circumstances in which trusts can 'write-off debt', for example when the person is genuinely without funds and, therefore, it would not be cost effective to pursue them for payment.

DHSC has no plans to amend the NHS Charging Regulations at this stage but will continue to work with Home Office and the NHS on implementing the temporary protections for late applicants and joining family members.

You have also requested confirmation as to whether an individual, who is a joining family member, remains entitled to free NHS care until their EUSS family permit expires, even if they have not submitted a valid application to the EUSS within three months of their arrival in the UK. A joining family member with an EUSS family permit would not be entitled to free secondary healthcare after the first three months unless they have submitted a valid application to the EUSS (evidenced by a CoA). In addition, as previously mentioned, DHSC has also set out in its guidance that, where a valid late application to the EUSS has been made (as evidenced by a CoA), the individual will not be chargeable for NHS healthcare from the date of that application until its final outcome.

I hope this information is helpful.

Yours sincerely,

C Winters
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