

Towards UHC: Legal Coverage for Undocumented Migrants in Norway



© Gutten på Hemsén, 2021

CONTEXT & DEFINITION

Undocumented Migrant

A person who moves or has moved across an international border and is not authorized to enter or to stay in a State pursuant to the law of that State and to international agreements to which that State is a party¹.

Situation in Norway

The most recent study attempting to estimate the number of undocumented migrants in Norway dates back to 2008 and estimates the number to be in a wide range between 10'000 to 30'000 people².

However, numbers do exist in relation to specific subgroups of undocumented migrants, such as persons with expulsion orders, persons whose visa has expired or asylum seekers whose application has been denied. According to the Norwegian Directorate of Immigration (UDI), from 2012 to 2021, the number of persons who are under an expulsion order and living in reception centres fell by 85 per cent, from 4960 to 729³.

RESULTS

NATIONAL LAW

Regulations on the right to health and care services for persons without permanent residence in the Kingdom (2011)

- Right to assessment:** "All persons staying in the country have the right to an assessment from a health specialist".
- Full rights to healthcare:** applies "in full only to persons who have legal residence in the country".
- Right to immediate care:** "All persons staying in the Kingdom have the right to immediate care".
- Children's right to health and care services:** "Persons under the age of 18 who do not meet the conditions according to § 2 [Full rights to healthcare] have, in addition to immediate help as mentioned in § 3 [Right to immediate help], the right to necessary health and care services from the municipality (...) and necessary health care from specialist health services (...) unless consideration for the child dictates that the help should not be provided".
- Right to healthcare that cannot wait:** includes care to prevent imminent death, permanent severe functional impairment, serious injury or severe pain; care before or after birth; termination of pregnancy according to the provisions of the Abortion Act, infection control.

Patient and User Rights Act (1999)

2. Scope: "The law applies to everyone who stays in the kingdom. The King can by regulation make exceptions (...) for persons who are not Norwegian citizens or who do not have permanent residence in the kingdom."

2-2. Right to assessment: "A patient who is referred to the specialist healthcare service must, within 10 working days after the referral has been received by the specialist healthcare service, receive information on whether he or she is entitled to the necessary healthcare"

Key messages:

- Undocumented migrants in Norway legally only have access to immediate health care and care that "cannot wait".
- Unclear legislation leads to uncertainty and arbitrary decisions amongst health care professionals when deciding whether treatment can or cannot wait.
- Norway's national legislation would not fulfil the legal obligations Norway has under the ICESCR if interpreted as in General Comments No. 3 and No. 14.

ANALYSIS

National Legislation

Undocumented migrants are only entitled to an assessment, immediate care and health care that is "absolutely necessary" and "cannot wait".

- This **excludes mental health care, rehabilitation, and treatment of chronic conditions**, including cancer⁶.
- The right to an assessment does not equate to the right to treatment (Art. 2-2 Patient and User Rights Act). Many referrals following an assessment end up being rejected⁷, because they do not fulfil the condition that treatment "cannot wait".
- The concept of immediate care and "care that cannot wait" have no grounding among medical professionals (unlike "emergency care"), leading to **uncertainty and arbitrary decisions among health care professionals** and leaving migrants unprotected if professionals come to the conclusion that their health condition does not meet this requirement.⁶
- There is an **exemption for children and pregnant women**, whose need for health services is greater (Art. 4 & 5 Right to health and care services Act).
- While D-Number holders (such as working foreign citizens), asylum seekers, refugees and reunited family members have access to health care with part of the cost covered under the National Insurance scheme, **undocumented migrants have to cover all expenses** themselves. Debt recover agencies are considered very aggressive in their efforts⁸.

ECHR

Case law based on judicial decisions by the European Court of Human Rights (ECtHR) says:

- Guide on Article 2 of ECHR (2022): States are obliged to take appropriate steps to safeguard the lives of those within its jurisdiction, including in the context of health care.
- Guide on the case-law of ECHR (2022): States have the **right to withhold certain public services**, including health care, from immigrants residing in the country unlawfully because they do not contribute to their funding.
- Guide on the case-law of ECHR (2022): Exposure to "a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy" would be considered a violation of ECHR article 3, which protects everyone from torture and inhuman or degrading treatment or punishment.

ICESCR

- General Comment No. 3 (1990): A State in which a significant number of individuals do not have access to essential primary health care is failing to fulfil its obligations under the Covenant.
- General Comment No. 14 (2000): States are obliged to respect the right to health by "refraining from denying or limiting equal access for all persons, including [...] illegal immigrants, to preventive, curative and palliative health services".

International treaties normally do not come into effect in Norway until incorporated into the domestic legal system by an act of Parliament. However, in 1999 Norway passed the Human Rights Act, through which five conventions (ECHR, ICESCR, ICCPR, CEDAW and CRC) received a special status and according to article 3 prevail over national law in case of incoherence⁹.

Norway's obligations both under the ECHR and the ICESCR are not entirely fulfilled, considering that the unclear legislation leads for example to the refusal of treatment of chronic diseases, including cancer, which can lead to severe pain and significant loss of life expectancy. The ECHR and ICESCR prevail over national regulations, however the ECHR is formulated broadly and judgments by the ECtHR have permitted the denial of health services to undocumented migrants, while the recommendations for the implementation of the ICESCR in the General Comments are auxiliary and non-binding.

REFERENCES

- ¹Sironi, A., Bauloz, C., & Emmanuel, M. (eds.). (2019). *Glossary on Migration. International Migration Law, No. 34*. International Organization for Migration (IOM): Geneva.
- ²Zhang, L.C. (2008). *Developing Methods for Determining the Number of Unauthorized Foreigners in Norway*. Statistics Norway: Oslo.
- ³Haarberg, K., & Lystrup, I. (2014). *Evaluation of return measures in ordinary reception*. Deloitte: Oslo.
- ⁴The European Court of Human Rights. (2024). *Press Country Profile - Norway*. Press Unit: Strasbourg.
- ⁵Office of the High Commissioner for Human Rights. (n.d.). *UN Treaty Body Database - Ratification Status for Norway*.
- ⁶Haddeland, H. B. (2019). *The Right to Health Care for Irregular Migrants in Norway: Interpretation, Accessibility, and Gaps Between Needs and Rights*. *Nordic Journal of Human Rights*, 37(4), 329–349.
- ⁷Magelssen, R., Austveg, B., & Minja, V. (2023). *Access to health services and barriers for people seeking asylum*. Norwegian Institute of Public Health: Oslo.
- ⁸Lillevik, R., & Tyldum, G. (2021). *Irregular assistance - A survey of Norwegian cities' encounters with irregular migrants*. Fafo: Bergen.
- ⁹Norwegian Human Rights Institution. (2020). *The Human Rights Framework in Norway*. Oslo.



© Red Cross Norway, n.d.