



Health Care in

NOWHERELAND

*improving services for
undocumented migrants in the EU*

Policies on Health Care for Undocumented Migrants in EU27

Country Report

Ireland

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Preface

Undocumented migrants have gained increasing attention in the EU as a vulnerable group which is exposed to high health risks and which poses a challenge to public health. In general, undocumented migrants face considerable barriers in accessing services. The health of undocumented migrants is at great risk due to difficult living and working conditions, often characterised by uncertainty, exploitation and dependency. National regulations often severely restrict access to healthcare for undocumented migrants. At the same time, the right to healthcare has been recognised as a human right by various international instruments ratified by various European Countries (PICUM 2007; Pace 2007). This presents a paradox for healthcare providers; if they provide care, they may act against legal and financial regulations; if they don't provide care, they violate human rights and exclude the most vulnerable persons. This paradox cannot be resolved at a practical level, but must be managed such that neither human rights nor national regulations are violated.

The EU Project, "Health Care in NowHereland", works on the issue of improving healthcare services for undocumented migrants. Experts within research and the field identify and assess contextualised models of good practice within healthcare for undocumented migrants. This builds upon compilations of

- policies in the EU 27 at national level
- practices of healthcare for undocumented migrants at regional and local level
- experiences from NGOs and other advocacy groups from their work with undocumented migrants

As per its title, the project introduces the image of an invisible territory of NowHereland which is part of the European presence, "here and now". How healthcare is organised in NowHereland, which policy frameworks influence healthcare provision and who the people are that live and act in this NowHereland are the central questions raised.

Healthcare in NowHereland: Improving services for undocumented migrants in the EU

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Introduction

This report is written within the framework of the research project, *NowHereland - Health Care in NowHereland – Improving Services for Undocumented Migrants in the EU*, and one of its work packages. The focus of this work package – *policy compilation* – was to collect data on policy approaches regarding access to health care for undocumented migrants in the EU member states, to deliver 27 Country Reports and to offer a clustering of the states. A descriptive approach has been applied. In order to contextualise health care access, certain other themes are covered, such as the main characteristics of the various health systems, aspects of policies regarding undocumented migrants and the general context of migration.¹

The term used in this project is thus, “*undocumented migrants*”, which may be defined as third-country nationals without a required permit authorising them to regularly stay in the EU member states. The type of entry (e.g. legal or illegal border crossing) is thus not considered to be relevant. There are many routes to becoming undocumented; the category includes those who have been unsuccessful in the asylum procedures or violated the terms of their visas. The group does not include EU citizens from new member states, nor migrants who are within the asylum seeking process, unless they have exhausted the asylum process and are thus considered to be rejected asylum seekers.

All the reports draw upon various sources, including research reports, official reports and reports from non-governmental organisations. Statistical information was obtained from official websites and from secondary sources identified in the reports. As regards legislation, primary sources were consulted, together with the previously mentioned reports. One salient source of this project was information obtained via a questionnaire sent to recognised experts in the member states.²

¹ Information regarding the project and all 27 Country Reports can be found at <http://www.nowhereland.info/>. Here, an *Introduction* can also be found which outlines the theoretical framework and method as well as a clustering of the states.

² For the report at hand, the persons to acknowledge are: Tonya Myles, Community Development and Policy Coordinator, Cairde, Diane Nurse, National Planning Specialist, Social Inclusion Office, Health Service Executive and Anne O'Mahony Integration Unit, Department of Education and Science.

The General Migration Context

Ireland entered the European Union in 1973 and is situated on the border of the Schengen area.

Ireland has a long history of significant emigration causing a decrease of population over a long period, from the second half of the 18th century and up to the 1960s, most often to the United Kingdom, the United States, and Australia (Ruhs 2009). With the exception of the 1970s, when for the first time in Irish history net migration to Ireland was positive, outflows continued to exceed inflows until the early 1990s. By the early 2000s, Ireland had turned into a "country of net immigration" and experienced for the first time a significant inflow of migrants — both workers and asylum seekers — from outside the European Union.

Recent history has been characterized by an increasing immigration from the mid-1990s to the early 2000s, driven by returning Irish nationals, but also by increases in the number of asylum applicants. This period was followed by new peaks in non-EU immigration flows and in the number of asylum applications from 2001 to 2004. Between 2004 and 2007, after EU enlargement, there was a shift from non-EU immigration flows to EU flows, when high levels of immigration from the new EU Member States brought immigration to unprecedented levels. There has been reduced, but still significant, net immigration in the period from 2007 to 2009, the fall largely resulting from decreased flows from new EU Member States (*ibid.*). The great majority among the various categories of non-EU nationals coming to Ireland in the last decade have been workers (about 280 000 work permits were issued from 1998 to 2008), followed by asylum seekers, students and dependents. In 2008, 26.1 percent of asylum applications came from Nigerian nationals, 6.1 percent from Pakistani nationals, 5.3 percent from Iraqi nationals, and 4.7 percent from both Georgian and Chinese nationals. The remaining 56 percent of applications included a diverse range of nationalities. In total, 74 000 applications were made from 1998 to 2008.

Since the accession of 10 new EU Member States in 2004, EU nationals have dominated migratory inflows and have resulted in higher levels of immigration. Workers from the new Member States do not need work permits and tend to be concentrated in lower-skilled sectors. Between 2005 and 2008, an average of 44 percent of the immigration flow was made up of nationals of the 10 EU states that acceded in 2004, together with Romania and Bulgaria, which acceded in 2007 (Ruhs 2009).

Ireland does not have any natural borders with migrant-sending countries. This reduces the possibility of irregular immigration (*ibid.*). Illegal entry into Ireland is probably easiest via Northern Ireland, which is a part of the UK. However, illegal labour by non-EEA nationals is likely to be more pervasive. In recent years, Ireland has passed a number of laws aimed at combating illegal immigration. Together, these laws provide a legal basis for deporting non nationals in violation of Ireland's immigration laws, banning the smuggling of illegal

immigrants, transporting of passengers without proper immigration documents, and financially penalizing or imprisoning employers and workers who do not comply with the Employment Permits Act 2003 (Ruhs 2009). To facilitate repatriation, Ireland has a return agreement with Nigeria and has also engaged the International Organization for Migration (IOM) to operate voluntary assisted return programs on its behalf. In 2008, 454 people were returned on such IOM programs (Ruhs 2009).

The Irish government has begun addressing immigrant integration and The Junior Ministry for Integration was created in 2007. The ministry is tasked with developing and coordinating integration policy across government departments and promoting the integration of legal immigrants (including refugees) (Ruhs 2009).

In 2008, Ireland received 3 865 asylum applications (Eurostat 66/2009). Of these, 1 010 came from Nigeria, 235 from Pakistan and 205 from Iraq (ibid.). The same year, 7 250 decisions were issued (in the first and second instance) and the rate of recognition was 30.6 % (in the first instance) (Eurostat 175/2009).

Total Population and Migrant Population

By 1 January 2010, the population in Ireland was 4 450 878 (Eurostat)³. In 2008, the total foreign-born population was 554 000 (Eurostat 94/2009). In 2006, 465 329 persons were registered as foreign residents by the Central Statistics Office of Ireland. This equals approximately 11% of the population (see Statistic year book Ireland 2009:17 which refers to a census in 2006).⁴ Irish society is becoming more diverse with 188 countries represented in the non-Irish population. However, 82% of these come from only 10 countries: UK, Poland, Lithuania, Nigeria, Latvia, US, China, Germany, Philippines and France (ibid.).

Estimated Number of Undocumented Migrants

With respect to undocumented migrants in Ireland, the numbers are comparatively low. The estimates range between 9 000 and 20 000, corresponding to 0.4% of the population (Baldwin-Edwards & Kraler 2009:41).

³Eurostat.

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&language=en&pcode=tps00001&tableSelection=1&footnotes=yes&labeling=labels&plugin=1> (09-03-2010)

⁴

<http://www.cso.ie/releasespublications/documents/statisticalyearbook/2009/Chapter%201%20%20Population.pdf> (22-01-2010).

Categories of Undocumented Migrants

In Ireland, illegal residents and persons who entered the country legally but subsequently overstayed e.g. their employment permits, are most salient (Dzhengozova 2009:67). Some foreign workers may not leave Ireland after their employment permits expire, or they might overstay their tourist visas. There are no estimates for the number of non-EEA nationals living and/or working illegally in Ireland (Ruhs 2009). Furthermore, the asylum process plays a role in "producing" undocumented migrants (Baldwin-Edwards & Kraler 2009:41).

Policies Regarding Undocumented Migrants

Regularization Practice, its Logic and Target Groups

Since 1997, there has been one program conducted in Ireland, in 2005 (for 4,5 months) by the Minister for Justice, called the Irish Born Child Administrative Scheme 2005 "IBC/05" (Dzhengozova 2009:69). It aimed at the many parents of Irish children who were undocumented and who faced the prospect of being deported. This scheme allowed parents of children holding Irish citizenship to apply for permission to remain on the basis of their parentage of a child born in the state, together with certain other criteria. Prior to 2005, all children born in Ireland were entitled to Irish citizenship, however this rule was changed, together with a previous rule whereby a parent could seek permission to remain in the country solely on the grounds of parenthood, which had previously created a situation in which a number of parents of children holding Irish citizenship were deported. As they often brought their Irish citizen children with them, it was a de facto deportation of citizens and applications to remain on humanitarian grounds were dealt with on a case-by-case basis (ibid.:69). Arguments upheld referred to children's rights under the Irish Constitution and to the EU Convention of Human Rights (ibid.:70). In the framework of the regularisation program, in 2005 the number of applicants was 17 900, of whom 16 693 were granted the status awarded by the programme, namely temporary, renewable permission to remain in the country and seek employment.. The principal countries of origin included Nigeria, China, Romania, Philippines, Moldova and Ukraine (ibid.). The program is characterised by managing (illegal) labour migration flows (Baldwin-Edwards & Kraler 2009:39).

In Ireland, The Immigration, Residence and Protection Bill of 2008 does not provide for any regularisation mechanisms. Once classified as being unlawfully resident, a foreign national no longer has any possibility of regularising his or her status in the State (ibid.:72)

Internal Control: Accommodation, Labour, Social Security and Education

In Ireland, the contractual agreement with the landlord in respect of privately rented accommodation does not require evidence of lawful immigration status if the rent is paid without state subsidies. From this follows that an undocumented migrant can, in principle, sign a private contract for accommodation. However, all persons are required to provide evidence of immigration status (such as 'stamp 4') if they want to avail of local authority (or

so called 'social' housing) and must satisfy the Habitual Residency Condition, and also must be legally resident in the state in order to avail of the rent supplement.⁵ In Ireland, an undocumented migrant cannot gain access to employment nor the related social security.

As regards education, Ireland implicitly permits school enrolment for undocumented children. This is in line with the Constitution and the Education Act 1998.⁶ In terms of the latter, education shall be made available "to people resident in the State". The Department of Education and Science has maintained a strong line that it is not the responsibility of schools to police the immigration system and that schools will not enquire as to the migrant status of students as a condition of enrolment.⁷ The right to education can be considered to be implicit as there is no impediment to the enrolment of children who do not have legal residency status in the country. However, enrolment of a child might in practice (documented by Cairde) require a PPSN (Personal Public Service Number),⁸ which is issued only to persons legally residing in Ireland. Furthermore, international students' children are specifically prohibited access to public schools.⁹

Main Characteristics of the Health System

Financing, Services and Providers

In Ireland, the welfare system is a "two tier system" as social security is financed through the fiscal system and at the same time private health insurance has a prominent role. However, the Irish health care system is predominantly tax funded. In 2006, a total of 78.3% of all health expenditure, both public and private, was raised from taxation, including pay-related social insurance (PRSI) and other sources of government income, such as excise duties. The remaining components of total health expenditure are raised from private sources, in particular out-of-pocket payments (McDaid et al. 2009). Over half (51.2%) of the Irish population has some form of private insurance coverage (McDaid et al. 2009:80). Within the Irish health insurance market there are a smaller group of undertakings with membership restricted to particular occupational groups (Colombo and Tapay 2004:8).

⁵ http://www.citizensinformation.ie/categories/housing/local-authority-and-social-housing/applying_for_local_authority_housing (11-03-2010).

⁶ In Eurydice report the interpretation is that Ireland permits explicitly school enrolment for undocumented children with reference to the Education Act 1998 (European Commission 2004:33); see report: Integrating Immigrant Children into Schools in Europe. Eurydice.
http://eacea.ec.europa.eu/ressources/eurydice/pdf/0_integral/045EN.pdf. (16-01-2010).

⁷ Information from Anne O'Mahony, Integration Unit, Department of Education and Science. February 2010.

⁸ State agencies that use PPS Numbers to identify individuals include the Department of Social and Family Affairs, the Revenue Commissioners and the Health Services Executive (HSE).

⁹ <http://www.inis.gov.ie/en/INIS/Pages/WP07000058> (06-03-2010).

The health system is governed by the Health Act. Overall responsibility for the health care system lies with the Government, exercised through the Department of Health and Children (DoHC), under the direction of the Minister of Health and Children (MoHC). Responsibility for the provision of health care and personal social services rests with the Health Service Executive (HSE) (McDaid et al. 2009).

Coverage in the Irish health care system is universal for anyone deemed “ordinarily resident” within the country. All persons recognised as “ordinarily resident”, depending on income and other eligibility criteria, fall into one of two categories. There is universal public hospital coverage. Beyond that, the service covered depends on income, age, illness or disability. Persons falling under Category I are entitled to a certain means tested medical card which entitles them to access to all medical services free of charge, such as GP care, dental and optometrist/ophthalmic services, including sight tests, pharmaceuticals, medical appliances and care in a public hospital ward. Entitlement is based on the concept of hardship, defined by income and age. The rest of the population falls into Category II (or non-medical-card holders), for which there is free access to publicly funded secondary care services (subject to some charges), but the costs of GP consultations are borne fully out of pocket and there are also contributions to the cost of most other primary and community-based services, including pharmaceuticals. Eligibility extends to some dental services as well as pharmaceuticals, and rehabilitative and long-term care, though co-payments are required. Long-term care is provided by the public system (McDaid et al. 2009:67). Category II patients pay out-of-pocket, or through their private health insurance, for GPs and most dental care. They are also liable for the cost of specialist care if they choose to be treated in specialists’ private rooms or as private patients in public hospitals. Both medical card holders and category II patients can elect to be treated privately in designated “pay beds” within a public hospital or in private hospitals, thereby enjoying freedom of choice as regards the health care provider. Private patients are liable for the payment of hospital charges and medical fees (Colombo and Tapay 2004).

Providers of health care are both public and private, although mainly state driven bodies. Primary care plays a central role in the provision of health care services, involving not only access to GPs but also to a broad range of community-based services, including nursing, social work, chiropodists, midwives, physiotherapists, occupational therapists, speech and language therapists, child health care, dental care and ophthalmic care services (McDaid et al. 2009:161). General practitioners (GPs) are self-employed and often work in a single-handed practice. Medical card holders need to enrol with a physician of their choice, chosen from a (limited) list. The hospital sector incorporates voluntary and HSE-owned hospitals. Voluntary hospitals are primarily financed by the State but may be owned and operated by religious or lay boards of governors (ibid.). Public hospitals tend to provide the most advanced tertiary treatments, accident and emergency services. The private hospitals generally supply less complex non-emergency care, in particular elective surgical treatments, psychiatric care and maternity care. Private hospitals account for about 50% of

the private/semi-private stock of beds in Ireland. The private sector also manages private nursing homes (Colombo and Tapay 2004).

Even if most providers are state driven bodies, there are also non-governmental organisations funded by statutory bodies to deliver specific health and social services. One example is that the HSE funds “*Spirasi*” to deliver specific support services to persons who have survived torture (Questionnaire Ireland).

Basis of Entitlement

In terms of the Health (Amendment) Act of 1991, entitlement is based on residency rather than on citizenship or the ability to contribute towards general taxation. Residents can take part in the health care system (apply for health card and/or health insurance) (McDaid et al. 2009).

Special Requirements for Migrants

Migrants with legal residency may apply and pay for health insurance on the same basis as any other resident in the country. Asylum seekers do not have to fulfil the residency or means-testing criteria to receive health care services while awaiting a decision on an application to remain in the country. Instead, they are entitled to the same range of health services as Category I (Medical Card) holders. In addition to standard services, communicable disease screening is also available on a voluntary basis (McDaid et al. 2009:67).¹⁰

Difference Sensitivity

There are some adaptive structures to migrants in health care in Ireland. A Consultation report was written in relation to The National Intercultural Health Strategy 2007-2012 by the Health Service Executive. This report was the outcome of national, regional and local consultation events that were held to advise on the development of the HSE National Intercultural Health Strategy. A range of minority ethnic organisations, community based and advocacy organisations, individuals, migrant workers, refugees, asylum seekers and Travellers contributed to the report, along with staff from the health sector (HSE 2008).

The National Intercultural Health Strategy involves a range of initiatives. One example is the provision of translated informational material such as the “Guide to Health Services”, which is available for downloading in Arabic, Mandarin, Czech, French, Lithuanian, Latvian, Polish, Russian and Spanish on the HSE website.¹¹ There are also resources, training and support initiatives targeting staff, such as an Emergency Multilingual Aid Box (EMA) aimed at

¹⁰ See also http://www.citizensinformation.ie/categories/health/entitlement-to-health-services/health_services_and_visitors_to_ireland (06-03-2010).

¹¹ www.hse.ie

assisting staff in communicating with patients in acute or emergency situations prior to calling for the services of an interpreter. There is for example a Language Identification Card and a set of 20 translated phrasebooks. Another example is the Health Services Intercultural Guide, which provides information regarding religious communities and cultural needs (25 groups) based on an extensive consultation and research process with cultural informants from the groups profiled, as well as healthcare providers and practitioners (HSE 2009).

Health Care for Undocumented Migrants

Relevant Laws and Regulations

There is one law relevant to health care, namely the Health Act.

The Health (Amendment) Act 1991 introduced the criterion of “ordinary residence” for determining the eligibility of persons for health services. Where a person is deemed not to be “ordinarily resident”, the health authority may apply the full fee for any services provided. Alternatively, they may provide urgent necessary treatment at a reduced charge or without charge (as deemed appropriate).¹²

Overall, in practice the law excludes undocumented migrants, including children, from the entitlement to access all but urgent medical treatment where such is deemed appropriate by the provider.¹³

Access to Different Types of Health Care

In Ireland, and in terms of the Health Act, all persons, including undocumented migrants, are allowed access to urgent medical treatment. In practice, there is some confusion due to lack of clarity around what constitutes urgent medical treatment/ emergency care (Questionnaire Ireland). This is acknowledged by authorities (see below, Political agenda).

Costs of Care

The cost of urgent medical treatment is dependent on the providers’ discretion and thus depends on the hospital. Patients are eligible to apply for reduced or waived hospital charges if they will incur a ‘financial hardship’ (e.g. when they cannot pay). But these

¹² See section 45(1) and section 47A of the Health Act 1970 (as amended by the Health (Amendment) Act 1991. For further information see: HSE Medical Card National Assessment Guidelines 2009 (page 54 ff.) http://www.hse.ie/eng/services/Find_a_Service/entitlements/Medical_Cards/mcgpvcguidelines.pdf (06-03-2010).

¹³ http://www.immigrantcouncil.ie/images/404_0110_unspecialrapporteursub.pdf (06-03-2010).

decisions are made at board level and on a case by case basis (regardless of the immigration status of the person). If the patient is not exempted, he or she will be charged the full rate, which is 2.5 times higher than the statutory rate for “ordinary residents”.¹⁴ If an undocumented migrant does not pay for the care, the cost is covered by the state.

Access to health care over and above urgent medical treatment (primary and secondary care) requires undocumented migrants to have the financial means to access private healthcare.

Specific Entitlements

As regards the entitlement to health care for undocumented migrants, there are no specific entitlements in terms of identified groups, diseases or conditions. Maternity services are also governed by the rule relating to ordinary residency .

Regional and Local Variations

In terms of entitlement to care there is no variation locally or regionally. Decisions regarding entitlements are based on national legislation and subject to interpretation at local level.

Obstacles to Implementation

Not relevant as there is no specific legislation. Nevertheless, amongst undocumented migrants there might be a sense of mistrust, fear and suspicion regarding the accessing of services and this may thus present an obstacle to accessing emergency care (Questionnaire Ireland).

Obligation to Report

There is no obligation on medical staff to report a patient to authorities such as the police (Questionnaire Ireland).

Providers and Actors

Providers of Health Care

In Ireland, providers of care may be found among the public hospitals’ emergency wards. Furthermore, there are non-governmental organisations which offer support to undocumented migrants.

¹⁴ http://www.citizensinformation.ie/categories/health/entitlement-to-health-services/health_services_and_visitors_to_ireland (16-02-2010) and http://www.citizensinformation.ie/categories/health/hospital-services/hospital_charges (16-02-2010).

Cairde is a community development organization working to tackle health inequality among ethnic minority communities, by improving ethnic minority access to health services and their participation in health planning and delivery.¹⁵ Cairde's Health Information and Advocacy Centre (HIAC)¹⁶ develops health care information for disadvantaged ethnic minority communities to enable them to access and use health services. HIAC provides health information and advocacy to individuals and groups. Cairde also deals with undocumented migrants. In 2009, 4% of the individuals provided advocacy services were reported as being undocumented. The main issues were: access to health services (especially to hospital and maternity services) and the costs of healthcare (Cairde).

The organisations dealing with undocumented migrants are active in the main cities (i.e. Dublin).

Advocacy Groups and Campaigns on Rights

In January 2010, the Immigrant Council of Ireland (ICI) made a submission to the UN's Special Rapporteur on the Human Rights of Migrants with respect to the access to economic and social rights and the right to health for undocumented migrants.¹⁷ The ICI expressed concern regarding new legislative provisions in the Immigration, Residence and Protection Act 2008, which is expected to become law later in 2010 and which will further limit access to health care.¹⁸ ICI also stated that the legislation should specify what constitutes 'essential medical treatment' and recommended that the term be redefined to include at least preventive, curative, rehabilitative health services, essential drugs and appropriate mental health treatments.

There are information campaigns relating to the accessing of healthcare for migrants. One example is the Migrants Right Center (MRCI).¹⁹ The MRCI argues that the limitations relating to the accessing of services through the public health system for undocumented migrants constitute a discriminatory practice (HSE 2009:26). They have issued recommendations relating to improved access to health information, more equitable access to services for all migrant workers, irrespective of their status, and for more effective gender and equality-proofing of all health services (HSE 2009:26). In addition, they argue that the health requirements of migrant workers need to be looked at strategically, with

¹⁵ <http://www.cairde.ie/about/> (06-03-2010).

¹⁶ <http://www.cairde.ie/projects/health-information-and-advocacy-centre-hiac/> (06-03-2010).

¹⁷ Special Rapporteur on the Human Rights of Migrants on access to economic and social rights by migrants - particularly the enjoyment of the right to adequate standard of living (Art. 11 of IESCR) and right to health (Article 12 IESCR) for undocumented migrants in Ireland. January 2010
http://www.immigrantcouncil.ie/images/404_0110_unspecialrapporteursub.pdf (20-01-2010).

¹⁸ ICI refers to Section 6(1) of the Immigration, Residence and Protection Bill, 2008,
<http://www.oireachtas.ie/documents/bills28/bills/2008/0208/b02a08d.pdf> (06-03-2010).

¹⁹ See http://www.mrci.ie/policy_work/IrregMigrant_UndocuMigrant.htm (06-03-2010).

entitlements being identified as one of the key issues. Difficulties accessing maternity services through the public health system for undocumented women are also identified (ibid).

Political Agenda

Undocumented migrants in general are on the agenda at a number of levels. Usually the relevant issues are addressed in general terms and not in terms of specific groups (such as women, children). In terms of healthcare, there is likely a sense of concern for the health status of individuals from this group, coupled potentially with some sense of frustration at being unable to deliver optimal care (Questionnaire Ireland). The National Intercultural Health Strategy 2007-2012 issued by the Health Service Executive (HSE 2007) and updated in 2009, makes reference to the situation with respect to undocumented migrants. The Consultation report on the National Intercultural Health Strategy refers to the fact that the Immigrant Council of Ireland has highlighted the difficulties faced by undocumented workers in accessing health services (HSE 2009:20). Furthermore, they refer to the arguments formulated by the Migrants Right Centre.

International Contacts

The non governmental organisations do not currently have international contacts.

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