



Health Care in

NOWHERELAND

*improving services for
undocumented migrants in the EU*

Policies on Health Care for Undocumented Migrants in EU27

Country Report

Spain

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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 methodological considerations as well as a clustering of the states.

² For the report at hand, the persons to acknowledge are: Dr M.Luisa Vázquez, MD, PhD, MSc, Health policy and Health Care Research Group, Head of Research and Development, Health Policy Research Unit, Consortium for Health Care and Social Services of Catalonia, Spain and Rebeca Terraza-Núñez, BSc, MPH, Researcher, Health policy and Health Care Research Group, Health Policy Research Unit, Consortium for Health Care and Social Services of Catalonia, Spain.

The General Migration Context

Spain entered the EU in 1986 (obtaining full rights in 1992) and is situated on the border of the Schengen Area.

As is well known, Spain has a colonial past and has displayed the related overseas endeavour. Currently, after having been an emigration country for decades, Spain is one of the major immigration countries in Europe. It was in the 1980s that migration to Spain started to become significant, since it was not until the beginning of the 21st century that the immigrant population became especially large (Arango and Finotelli 2009:83).

From an historical perspective, there were 180 000 foreign nationals resident in Spain in 1980, and the majority of these were Europeans from Germany, the United Kingdom and other countries of Central and Northern Europe, and consisted mainly of retired persons (González-Enríquez 2009). These immigrants also included a small group of Latin Americans. Since 1985, immigrants have originated from a broader range of countries, including Morocco, China, Sub-Saharan Africa, Ecuador, Colombia, The Dominican Republic and some Western and Eastern European countries (mainly Romania). There has been a shift in the number of migrants originating from these countries. Towards the end of the 1980s, persons from western European countries accounted for half of all immigrants, but in 2008 they accounted for just 18%. The remainder originated mainly from Latin America, Eastern Europe and North Africa. Persons from Morocco formed the largest group of non-EU immigrants in the 1990s, but they have been overtaken in number by the rapid growth in immigrants from Latin America (mainly from Ecuador and Colombia) (ibid.).

The immigrant population has increased from about one million in 2000 to about 4.5 million in 2007. The vast majority of foreign residents have a residence permit, and most of them migrate to Spain seeking employment, whilst immigrants from within the EU consist mainly of retired persons originating mainly from the United Kingdom and Germany. However, this has not come about as the result of a planned, rational immigration policy or recruitment program. Regulation of migration had not previously been very successful and was not in congruence with the substantial demand for foreign labour, especially the demand for low-skilled labour in the construction industry, domestic and other personal services, health care, the industrial sector and the agricultural industry. The mismatch between inadequate policy regulations and strong demand for labour fuelled irregular migration flows (Arango and Finotelli 2009:83). From 2001 onwards, there was a substantial growth in the scope of regular and irregular immigration in Spain, due to the country's economic boom (Aparicio Gómez and Ruiz de Huisoboro 2009:152).

In the case of irregular migration, it has been a rule rather than an exception for non-EU immigrants to have gone through a phase of illegality in the process of their immigration to Spain. This may be deduced from demographic and qualitative data. More than 40% of the

immigrants experienced irregularity during the first years of this century (González-Enríquez 2009:8).

As regards asylum seekers, their numbers in Spain are small and there are no studies regarding their characteristics (González-Enríquez 2009:41). Successive governments have maintained a very restrictive policy as regards the granting of asylum and have accepted on average less than five per cent of applications (González-Enríquez 2009:8). In 2008, Spain had 4 400 applications for asylum, mainly from citizens of Nigeria (800) and Colombia (750) (Eurostat 66/2009). The same year, 6 250 decisions were issued (in the first and second instance) and the rate of recognition was 5% (275 decisions in the first instance) (Eurostat 175/2009).

Total Population and Migrant Population

By 1 January 2010 the population in Spain was 46 087 170 (Eurostat)³. In comparison, by 1 January 2009, the population, as registered by city councils, was 46 661 950, including a foreign-born population of 5 598 690⁴.

In 2008, the foreign-born population was 5 262 000, which equalled 11.6% of the total population (Eurostat 94/2009). The main countries of origin of these persons were Romania (734 800), Morocco (649 800) and Ecuador (423 500) (ibid.).

Estimated Number of Undocumented Migrants

As in every country, it is difficult to quantify the number of undocumented migrants currently living in Spain. However, available estimates agree that the numbers are high, ranging between 150 000 and 700 000, which amounts to 1% of the population (Baldwin-Edwards & Kraler 2009:41). However, estimates from 2006 suggested some 900 000 undocumented migrants living in Spain (Arango and Finotelli 2009:85). The Clandestino Project estimated that there were 354 000 irregular migrants living in Spain in early 2008, which was a substantial decrease from estimates pointing to as many as 1 232 000 irregular immigrants at the beginning of 2005 (Vogel 2009).

³ Eurostat.

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

⁴ Instituto Nacional de Estadística. Avance del Padrón Municipal a 1 de enero de 2009. Datos provisionales. Madrid: Instituto Nacional de Estadística; 2009.

Categories of Undocumented Migrants

In terms of the different categories of undocumented migrants in Spain, they typically arrive as tourists and overstay after the legal maximum of three months allowed by this kind of entry (González-Enríquez 2009:8). In addition, there are two minor pathways: irregular border crossing and befallen irregularity.⁵ The irregular border crossings were of significance up until the deploying of the SIVE (Sistema Integrado de Vigilancia Exterior), a sophisticated electronic surveillance mechanism on the southern coast of Spain and on the Canary Islands, and the beginning of effective collaboration with Morocco regarding its nationals, resulting in the near halting of Moroccan irregular migration. As regards the different pathways to becoming an undocumented migrant, the role of the asylum process in “producing” undocumented migrants is unclear (Baldwin-Edwards & Kraler 2009:41). Finally, the opportunities provided for obtaining employment in the irregular economy makes irregular immigration to Spain a preferable option for asylum seekers.

Policies Regarding Undocumented Migrants

Regularization Practice, its Logic and Target Groups

Throughout the last two decades, reducing the rate of irregularity has been a major challenge for the Spanish government. In this context, there have been 5 regularisation programs since 1997 (6 programs, if counted from 1991 and 2 more since 1980) (Arango and Finotelli 2009:83). In addition, Spanish legislation uses other individual forms of regularisation, such as the *arraigo* (rootedness), humanitarian protection for rejected asylum seekers and the granting of a temporary residence permit for collaborating with the Spanish police. However, mass regularisation has played the most relevant role in terms of both magnitude and frequency. Approximately 1.2 million foreigners have been regularised in Spain since 1986, half of them after 2005. All of the regularisation procedures granted a temporary right (in respect of residence and employment) to remain in the country, which was renewable under certain conditions, such as an employment relationship. In the long term, regularised migrants have access to a long-term residency status in accordance with EU Directive 2003/EC/109 (ibid.). The logic behind regularisation programs has been based on arguments which bear upon the labour market and fighting irregular employment, as most processes have targeted irregular workers (Arango and Finotelli 2009:84-85). During the scheme of 2005, nearly 700 000 applications were received and 578 375 were approved (ibid.:86). However, certain programs also involved alternative migrant categories, such as relatives (1996, 2000 and 2001), asylum seekers (2000) or specific nationalities, such as Ecuadorians. A common trait in terms of the requirements in respect of such regularisations is the requirement to prove that the applicant had been living in

⁵ “Befallen” in this context aims at irregularity resulting from slow bureaucratic systems and procedural issues (González-Enríquez 2009:10).

Spain before a certain reference date and that the applicant did not have a criminal record (ibid.:84).

Internal Control: Accommodation, Labour, Social Security and Education

In Spain, undocumented migrants may sign a contract of accommodation. In truth, it is a prerequisite that a migrant be registered in the local civil register in order to be entitled to healthcare and education (see below). However, the migrant does not have access to employment or the related social security.

The right to education for undocumented children in Spain may 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 (European Commission 2004:33).

Main Characteristics of the Health System

Financing, Services and Providers

The Spanish health system (as part of the general welfare system) is primarily funded through taxation (Durán et al. 2006:xv). From 1986, the transition to a National Health System involved a reform of financing which has transformed a previously insurance-oriented system into the current system financed by taxes. The current system provides universal coverage with free access to healthcare (at the point of delivery) and has been decentralised since 2002, with authority delegated to the 17 regions, (Autonomous Communities) (ibid.). Central government has the responsibility of promoting coordination and cooperation in the health sector. The two main resources of the Autonomous Communities are taxes and allocations from the central government. Private healthcare financing consists of three complementary sources of finance, namely out-of-pocket payments to the public system, out-of-pocket payments to the private sector and voluntary health insurance (Durán et al. 2006:xvi). The Spanish General Health Care Act of 1986 outlines the main principles of the Spanish National Health System (NHS) (ibid.).

Health system coverage in Spain has been expanded from 81.7% of the population in 1978 to 99.5% in 2005, and includes low-income inhabitants, immigrant adults and children (Durán et al. 2006:xviii). A comprehensive package of benefits is provided for in the Cohesion and Quality Act of 2003 (ibid.), which specifically excludes dental care (ibid.:33). The sustainability of such a “generous” system of universal coverage is coming under increasing discussion in Spain, involving ideological arguments relating to an aged population, immigrants and so-called “health tourists” (PICUM 2007).

As regards the providers of healthcare, variations in terms of ownership are evident in different regions (Questionnaire Spain).⁶ However, generally the state driven bodies are the most important providers (appr. 80%), especially in primary care and hospitals. Private hospitals and private clinics may also be found (Durán et al. 2006:2), as well as nongovernmental organisations (NGO).

Basis of Entitlement

The basis of entitlement to healthcare is legal residency, as the “right to health for all” is recognised in Spanish law (Article 43 of the 1978 Spanish Constitution). The general preamble to the 1986 General Law on Health provides that, “all Spanish citizens, as well as foreign citizens residing in the country, have the right to health and to healthcare.” The General Law 47/2000 on the Rights and Freedoms of Foreign Nationals in Spain and their Social Integration, Article 12, provides for the right to healthcare assistance as follows: “Foreign nationals located in Spain and registered at the municipality where they customarily reside are entitled to health assistance under the same conditions as Spanish citizens” (Médecins du Monde 2009). To prove entitlement, a social security card is used, which is issued to all beneficiaries and their immediate families, and which is progressively being replaced by individual health cards. All residents who do not have social security and who have a low income may receive benefits by way of another type of health card, called a “Personal Healthcare Card” (Médecins du Monde 2009:19). This is known as TSI (tarjeta sanitaria individual)⁷.

Special Requirements for Migrants

There are no special requirements which apply to regular migrants beyond that which applies to citizens. Foreigners registered in the local civil register are entitled, regardless of their status, to the same rights in respect of free healthcare as Spanish citizens (General Law 4/2000 of 11 January 2000).

Difference Sensitivity

The increase in the immigrant population has generated policy responses at both national and regional level, which involve the development of special healthcare policies and include action plans in Health Plans and national and regional immigration plans.⁸ Objectives and action plans address the access and adaptation of the health services, health promotion,

⁶ The Catalan healthcare system, based on a quasi-market model, differs from the other Spanish regions. Currently, seventy percent of public hospital beds and twenty percent of primary care centres are managed by autonomous providers with diverse ownership, including public trusts and enterprises, municipal and private non-profit foundations and primary care physicians’ cooperatives (Servei Català de la Salut 1999). Servei Català de la Salut. Memòria d'activitat 1999. La xarxa sanitària d'utilització pública. Barcelona: Generalitat de Catalunya; Departament de Sanitat i Seguretat Social; 2000.

⁷ CatSalut. The TSI card, your personal healthcare card. CatSalut 2002 [cited 2008 Feb 14].

⁸ See <http://www.gencat.cat/salut/depsalut/index.html>

health need assessment, and the training of healthcare personnel in cultural competencies. Regional policies follow the national guidelines, but their actions are more specific. The regions differ in their emphasis in that whilst certain regions formulate isolated strategies, others adopt an integrated approach, adapting health programs to meet migrants' specificities (Vázquez et al. 2009). Consequently, some adaptive structures to immigrants may be found, such as mediation and translation services, translated information materials and health services adapted to migrant specificities. There are also examples of regional and local interventions, such as in Andalucía and Catalonia (Terraza et al. 2009; PICUM 2007).

Health Care for Undocumented Migrants

Relevant Laws and Regulations

The relevant legislation with respect to healthcare in Spain is, as previously stated, Article 43 of the 1978 Spanish Constitution, which acknowledges the "right to health for all". The Spanish General Health Care Act of 1986 provides that "all Spanish citizens, as well as foreign citizens residing in the country, have the right to health and to healthcare." Of more specific relevance in relation to undocumented migrants is the General Law 47/2000 on the Rights and Freedoms of Foreign Nationals in Spain and their Social Integration, Article 12: The Right to Health Assistance, which provides as follows: "Foreign nationals located in Spain and registered at the municipality where they customarily reside are entitled to healthcare under the same conditions as those enjoyed by Spanish citizens" (Médecins du Monde 2009). Furthermore, General Law 4/2000 of 11 January 2000 provides that registered foreigners are entitled, regardless of their status, to the same rights in respect of free healthcare as Spanish citizens (ibid.).

Access to Different Types of Health Care

In a comparative study, Spain was found to be one of the countries in Europe providing the widest health coverage to undocumented migrants. In spite of gaps and failures, the essence of Spanish legislation is to provide universal access to healthcare. Thus, free access to healthcare is offered to all, including undocumented migrants (PICUM 2007:8, see also HUMA Network 2009), provided the person has a personal healthcare card. However, all persons, regardless of status and even those not in possession of a health card, are entitled to emergency treatment (necessary due to an accident or serious illness) with no specified requirements. Emergency care is guaranteed free of charge to undocumented migrants, even where such persons are not officially registered with the municipality managing the public healthcare system, in cases of accident or serious illness. Accessing universal care (primary, secondary and hospitalisation) requires registration with the city council and the possession of a "Personal Healthcare Card" (TIS, Tarjeta Individual Sanitaria).

Costs of Care

Migrant patients in Spain pay for healthcare out-of-pocket to the same extent as all other citizens. Patients pay 40% of the costs for medication. In certain cases, the patient only pays 10%, and in other cases the healthcare is provided free of charge (medication for some chronic diseases, for pensioners and persons who are temporarily incapacitated). (Durán et al. 2006:18). There are regional variations, with more generous systems applying in different regions (ex. Valencian Community) (Médecins du Monde 2009). The cost is thus covered by the state through the Spanish National Health System.

Specific Entitlements

Undocumented migrants under the age of 18 are entitled to full healthcare treatment under the same conditions as nationals. Pregnant women are entitled to treatment during pregnancy and childbirth, as well as postnatal treatment, even if they are not officially registered.⁹

This is in terms of The General Law on Health. HIV screening and anti-retroviral treatments are free for persons in possession of the Personal Healthcare Card (Médecins du Monde 2009).

Regional and Local Variations

The entitlements to care laid down in the Spanish constitution cannot be said to vary. However, all regions have established a regional organisation of the healthcare system, through the integration of all public health services and centres (Durán et al. 2006). Given the decentralised Spanish health system, entitlements do vary in practice, since access to the required documentation appears to vary both at local (city) and regional level. There are major differences between the regions (autonomous communities) in terms of the response to requests for health cards and in relation to the user charges for pharmaceuticals, according to Médecins du Monde (2009:19). One example of this is Murcia, where (due to pressure from NGOs such as Murcia Acoge) a so-called “solidarity health card” has recently been put in place for migrants not registered with the town council (PICUM 2007).

⁹ Health care for immigrant population. http://www20.gencat.cat/portal/site/pla-salut/menuitem.98854c4efd5306c1bd2aa410b0c0e1a0/?vgnnextoid=8fda796cd8027110VgnVCM1000000b0c1e0aRCRD&vgnnextchannel=8fda796cd8027110VgnVCM1000000b0c1e0aRCRD&vgnnextfmt=default&newLang=en_GB (2010-03-10).

Obstacles to Implementation

Several studies have documented many practical obstacles preventing undocumented migrants from gaining access to the health system which run contrary to legal provisions. The result is that the public health system does not cover all the relevant medical needs of a number of undocumented migrants residing in Spain. Therefore, the right to access publicly financed health care, regardless of administrative status, is limited in practice (PICUM 2007:81). The conditions and requirements (valid passport, a proven residency, the fact that police have access to registers) for registration with the municipality, constitute the greatest barriers to accessing healthcare. The administrative routines and interpretations vary between the various municipalities (ibid.). For example, the Autonomous Community of Madrid began providing health cards, with a validity of six months, to undocumented migrants without requiring them to register with the municipality, in order to overcome these obstacles (ibid.:86) .

Furthermore, obstacles have been identified in studies, which also bear upon undocumented migrants, and which have been experienced by the immigrant population in respect of accessing healthcare. Although access to healthcare is perceived as being straight forward when using the personal healthcare card, interviewees identified certain barriers related to the immigrant population (poor knowledge of the system, poor working conditions), and to the system (availability of information, organisation) and to the healthcare personnel (medical care, discriminatory attitudes) (Toledo et al. 2009).

Obligation to Report

There is no obligation on healthcare staff to report undocumented migrants to authorities (Questionnaire Spain).

Providers and Actors

Providers of Health Care

The provider of healthcare for undocumented migrants in Spain is the National Health System (Questionnaire Spain). However, despite the Spanish NHS providing wide statutory health coverage to undocumented migrants, certain nongovernmental organisations find it necessary to provide direct medical assistance, due to the obstacles in respect of obtaining care in practice in particular areas, such as in maternity care or family planning (PICUM 2007). Examples of these organisations include Médicos del Mundo, Médicos sin Fronteras, Salud y Familia, KARIBU-Amigos del Pueblo Africano and Red Acoge.

Providers of care for undocumented migrants within the NHS system may be found throughout the country (Questionnaire Spain). This is also the case in respect of the nongovernmental organisations. One salient example is Médicos del Mundo (Spain), which provides medical assistance (in Centros de Atención Sociosanitaria and mobile units) to undocumented migrants (i.e. persons excluded from the public health system) in nine autonomous communities. They provide primary healthcare, vaccinations, screening of HIV

and sexually transmitted diseases, mental health services, support in obtaining medicine, and refer and accompany patients to the healthcare institutions (PICUM 2007:84). There are examples of coordination and cooperation between the nongovernmental organisations' activities and the authorities and public administration bodies.

Advocacy Groups and Campaigns on Rights

Both advocacy groups and campaigns may be found within the mainstream system in Spain, including among non-profit organisations and in some cases involving other organisations, such as trade unions. One example is an agreement between the Department of Health of the Autonomous Community of Andalusia, signed, along with several NGOs and trade unions (UGT and CC.OO.), to guarantee and facilitate immigrants' access to the healthcare system (PICUM 2007). Some Spanish authorities have acknowledged a need to organise information campaigns and frequently publish booklets and other printed materials to inform and facilitate access to healthcare for undocumented migrants (ibid.). This is also the case with some public hospitals, which have taken the initiative of launching projects to reach, inform and assist immigrants whilst taking into account their specific needs. One example of such is the Hospital Punta de Europa, a public hospital in Algeciras, located in the south of Spain and encountering persons crossing the Strait of Gibraltar. At this hospital, there are additional initiatives to address language and cultural barriers, such as a simultaneous telephonic interpretation system available to users and medical staff, the translation of key documents into several languages, and courses for medical staff to improve their language skills and their understanding of health and multiculturalism (ibid.).

Furthermore, actions addressed to improve access to healthcare for undocumented immigrants have, as previously mentioned, been proposed by the NHS, including immigration and integration plans, and health plans. There are also local initiatives (Terraza et al 2009).

Political Agenda

In Spain there is an ongoing debate regarding irregular migration in terms of so-called "health tourists" and the generous entitlements to care which apply to them (PICUM 2007). However, the debate does not appear to be a priority within the current political agenda (Questionnaire Spain).

International Contacts

Actors in the field of healthcare for undocumented migrants in Spain have international contacts. Established organisations such as Médicos del Mundo and Médicos Sin Fronteras are active, which implies international contacts.

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