

PICUM's submission to the United Nations High Commissioner for Human Rights

Human Rights-Based Approach to Universal Health Coverage inclusive of undocumented migrants

4 April 2023

Introduction

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of 164 organisations working with undocumented migrants in 31 countries, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With two decades of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

PICUM welcomes the Office of the United Nations High Commissioner for Human Rights (OHCHR) [initiative to develop a policy brief](#) that provides guidance on the implementation of Universal Health Coverage (UHC) that is consistent with legally binding human rights norms.

As any other human right, the right to health is universal and based on the principle of non-discrimination to treat every person equally – including undocumented migrants¹. In practice, many people are denied access to essential health services simply because they do not have regular migration status in the country they live in. Even in countries where health services are available as a matter of law, there are many administrative and other practical barriers that can prevent people who are undocumented from receiving the care they are entitled to. Undocumented migrants may be denounced to the immigration authorities or receive large bills they cannot pay as a result of accessing services. They may also be denied care because of complicated and inconsistently applied rules. Sometimes, administrative personnel in hospitals are not even aware that undocumented people have a right to access health care services. As a result, people who are undocumented often do not use even the health services they are entitled to. When they do access health services, it is often late, in emergencies.

PICUM's submission provides examples from the European region on access to health care for undocumented migrants, as well as some lessons learnt from the COVID-19 vaccine rollout to undocumented migrants. PICUM concludes with recommendations on building accessible, effective, and resilient health system for all, regardless of migration status.

Country examples

For nearly thirty years, several European countries (some with a long history of migration) have had in place legislation to ensure that undocumented migrants residing in their countries can access necessary preventative and curative healthcare. Notably these include:

- **Belgium** (since 1996), which offers Urgent Medical Aid (AMU-DMH)² to undocumented migrants. This covers all health care, preventive and curative, certified by a doctor.
- **Italy** (since 1998), which grants urgent care and essential care to undocumented migrants³.
- **France** (since 1999), which offers State Medical Aid (AME)⁴, which provides free access to nearly all health services available to French nationals. AME covers care related to sexual and reproductive health such as pregnancy, delivery, family planning, contraception and abortion. It is awarded based on request and subject to conditions of residence and resources for a period of one year.
- **Portugal** (since 1999), which allows undocumented migrants who have been resident for 90 days to register with local health centre to access most services⁵.

1 PICUM (2022) [The Right to Health for Undocumented Migrants](#)

2 [Arrêté royal relatif à l'aide médicale urgente octroyée par les centres publics d'aide sociale aux étrangers qui séjournent illégalement dans le Royaume](#) (Royal Decree, 12 December 1996)

3 Art. 35, para. 4 of Legislative Decree no. 286/98, see also <https://www.icmigrations.cnrs.fr/en/2022/07/25/defacto-031-06/>

4 Art. L.251-1 of the Social Action and Family Code Loi No. 99-641 of 27 July 1999; see also: <https://www.service-public.fr/particuliers/vosdroits/F3079>

5 [Despacho do Ministério da Saúde No. 25/360/2001](#); [Decreto Lei No. 135/99 \(1999\)](#). Moreover [Decreto-Lei nº 67/2004](#) de 25-03-2004 reiterates the equal right to health care for children until working age (which is 16) and establishes a specific register for them.

The following section highlights three more recent examples from European countries who have adopted legislative changes to extend access to health care to undocumented migrants. While the health care coverage for undocumented migrants in the following countries can be seen as somewhat more restrictive (and none of these states can be said to have fully achieved the [World Health Organisation's definition of universal health coverage](#) for everyone on their territory, regardless of migration status), these countries have nonetheless shown more recent leadership and forethought in putting in place legislative schemes that provide entitlements to health care for people in an irregular situation.

Finland

A new law recently came into force in Finland in December 2022 that expands health care for undocumented migrants living in the country⁶. Under this law, undocumented migrants can now access necessary care – that is, care that health care professionals deem necessary. This covers, for instance, conditions like diabetes or asthma that, if left untreated, would constitute a risk to the person's health and increase the likelihood of urgent care being needed in the future.

Before this change, Finnish legislation only guaranteed urgent care, which was often interpreted restrictively as emergency care. More inclusive practices were left to the goodwill of doctors and municipalities. For instance, some necessary care was already being provided in Helsinki and Espoo. Under the new law, undocumented patients are still expected to pay the full cost of the care they receive. If they do not have sufficient resources, they are still expected to pay the “patient fees” (what is not reimbursed by the state), while the medical professionals will be compensated by the health care authorities. Questions remain around how to evaluate the patient's financial situation and ability to pay, and how much they will be requested to pay. The law also allows undocumented people to access full maternity care and paediatric care, and covers groups as diverse as people who were denied asylum and other undocumented migrants, people who are waiting for a residence permit linked to, for example, family ties, and EU citizens without health insurance.

Spain

The right to access free public health care in Spain used to be guaranteed to both Spanish citizens and those habitually residing in the country, irrespective of their residence status. A 2012 reform linked the right of access to health care services to Spanish citizens or being registered with Social Security, effectively excluding undocumented migrants (except children), who were only entitled to receive free treatment in emergencies, and maternity care⁷. The reform implemented an insurance-based health care system that created multiple categories of eligible patients, and different procedures for each to access care, resulting in significant bureaucratic complexity.

6 [HE 112/2022 vp](#) [accessed 27 March 2023]; see also [PICUM \(2023\) Finland: New law expands health care for undocumented migrants](#)

7 Royal Decree Law 16/2012, of 20 April, on urgent measures to ensure the sustainability of the National Health System and improve the quality and safety of its measures benefits available at the [European Commission Website on Integration](#) accessed on 4 April 2023

In 2018, the Royal Decree Law (RDL) 7/2018 was introduced to renew universal health care in Spain, recognising the right to protection of health for all undocumented migrants residing in Spain⁸. However, this broad right to care is dependent on complying with a set of requirements demonstrating that the person does not have any other type of health coverage and that they have been living in Spain for three months. The law does not create any specific guarantees for any categories of person (e.g. pregnant women) or of care. Some regions (e.g. Aragón, Euskadi) have taken steps to include vulnerable groups like women and children without the proof of residence, but this is not the case across all regions, leaving many people outside of the system.

Although RDL 7/2018 was initially welcomed for renewing universal health care in Spain, civil society actors argue that it is not being applied. A major concern is that this is due to the ambiguous nature of some of its provisions, which has given rise to restrictive interpretations by some regions. The law does not standardise the procedures or requirements for obtaining a health card and does not guarantee healthcare for children, pregnant women or other especially vulnerable groups, or care for accidents and emergencies. All Spanish autonomous communities currently have some type of mechanism to provide health coverage to undocumented migrants, some of which emerged to mitigate the situation created by the RDL16/2012. However, there are problems of significant fragmentation among the 17 regional health care systems, recognising different degrees of coverage and having different acceptance requirements, some of which are very difficult to comply with.

A draft law on Equity, Universality and Cohesion of the National Health System has been presented and is being negotiated which has the potential to address some of these gaps in access to universal health care. Civil society organisations have sent amendments needed to be included to assure that the law would guarantee Universal Health Coverage⁹.

Sweden

Before 2013, undocumented migrants over 18 years of age were not mentioned in the Swedish law on Health and Medical Care for Asylum Seekers and Others of 2008¹⁰, and were only entitled to emergency health care and had to pay the full costs for receiving that care (after treatment). In 2013, the Swedish Government introduced significant reforms to the health care system, enacting a law on health and medical care for certain foreigners living in Sweden without necessary permits¹¹.

Under the 2013 law, undocumented adults are entitled to access acute care and health care *that cannot be deferred*, including dental care, maternity care, abortion, and related medicines, for a small charge (5 EUR) – the same level of care provided to asylum seekers. The law also grants access to health care to all undocumented children (including those that have not claimed asylum) on the same level as regularly-residing and Swedish children. Unlike asylum seekers, undocumented migrants cannot apply for compensation of costs over €43. Regions may offer undocumented migrants wider health coverage up

8 Royal Decree-Law 7/2018 on universal access to the National Health System new legislation (2018) available at the [European Commission Website on Integration](#) accessed on 3 April 2023; See also: Center for Economic and Social Rights (2018) [When human rights triumph over austerity: Spain restores universal health care](#) accessed on 4 April 2023

9 REDER (2022) [REDER presenta sus enmiendas a la nueva Ley para alcanzar la verdadera universalidad sanitaria](#)

10 Law (2008:344) On Health Care For Asylum Seekers And Others. Original Language Title: [Lag \(2008:344\) om hälso- och sjukvård åt asylsökande m.fl.](#)

11 Law (2013:407) Health and Medical Care for Certain Foreigners Residing in Sweden without Proper Documentation Act. Original language title: [Lag \(2013:407\) om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd](#); See also Swedish Council on Medical Ethics (2020) [Health care of persons without permanent residence permits Ethical aspects of treatment requiring aftercare](#)

to the level of citizens. As of 1 April 2023, five regions out of 21 offer full health care for undocumented migrants¹².

The Swedish law concept of *'care that cannot be deferred'* is controversial in that it places the responsibility to decide whether a person is entitled to health care on the individual health professional. The National Board of Health and Welfare has concluded that the concept is not consistent with science, medical ethics or human rights¹³. In 2015, the Swedish Agency for Public management also underlined the difficulty to interpret the formulation "care that cannot be postponed"¹⁴.

In October 2022, the coalition agreement of the new government introduced several proposals affecting criminal policy, migration policy and the rule of law. The proposals include revoking access to subsidized dental care and imposing fees on all migrants for access to interpreters in healthcare and other services¹⁵. Furthermore, there is a worrying proposal to introduce a "notification obligation between the Police Authority, the Migration Agency, and other authorities" (which includes health care professionals)¹⁶.

Covid-19 vaccine roll-out to undocumented migrants

In early 2021, as European countries started rolling out Covid-19 vaccines for the general population, PICUM began mapping to investigate if undocumented migrants were facing any administrative barriers in requesting the vaccine, and if they faced immigration enforcement as a consequence of getting the vaccine¹⁷. Outcomes of this research is collated in a report "Some lessons learned from the COVID-19 pandemic on the right to health for undocumented migrants"¹⁸, which includes country examples (United Kingdom, Belgium, Spain, Ireland, Portugal, Greece) of Covid-19 vaccines for undocumented migrants. Later in 2021, the investigative journalism body Lighthouse Reports released a policy scorecard¹⁹ of 18 European countries' policies concerning the Covid-19 vaccine for undocumented migrants.

Despite numerous challenges, PICUM found the portrait not to be entirely bleak²⁰. In fact, the pandemic opened windows of opportunity for the inclusion of undocumented migrants in quite unlikely ways. Pushed by considerations about public health, some European countries adopted measures which aimed to reduce the exclusion of undocumented people from public services. For instance, Portugal temporarily regularised the status of all people with a pending residence application, so they could have access to state support, including full access to health care. Ireland granted safe access to health care to undocumented people, ensuring no data is shared with immigration authorities. Imperfect and impermanent as many of these measures may be, civil society should seize the opportunity to show policy makers that change is possible and that more inclusion benefits everyone.

12 The five regions which offer full access are Sörmland, Östergötland, Västmanland, Gävleborg and Västerbotten. However the regions may have different definitions of who is considered undocumented or not meaning that the access to healthcare might still not be accessible for migrants that would be considered undocumented in another region. This information was communicated by the Swedish Red Cross, April 2023

13 Socialstyrelsen (2014) [Vård för papperslösa - Vård som inte kan anstå, dokumentation och identifiering vid vård till personer som vistas i landet utan tillstånd](#). Stockholm: Socialstyrelsen

14 Statskontoret (2016) [Vård till papperslösa - Slutrapport av uppdraget att följa upp lagen om vård till personer som vistas i Sverige utan tillstånd](#) (2016:11). Stockholm: Statskontoret

15 [Tidöavtalet: Överenskommelse för Sverige](#)

16 [Tidöavtalet: Överenskommelse för Sverige](#), see also: Civil Rights Defenders (2022) [The Tidö Agreement review, a rights-based review of the Tidö Agreement](#), p.5

17 PICUM (2022) [Some lessons learned from the COVID-19 pandemic on the right to health for undocumented migrants](#)

18 PICUM (2022) [Some lessons learned from the COVID-19 pandemic on the right to health for undocumented migrants](#)

19 Lighthouse Reports (2021) [Vaccinating Europe's Undocumented: Policy scorecard ranks European countries efforts to respond to Covid-19](#)

20 PICUM (2022) [Some lessons learned from the COVID-19 pandemic on the right to health for undocumented migrants](#)

Recommendations

Building accessible, effective, and resilient health system for all means ensuring that every person has access to health care, regardless of their residence status. In order to build Universal Health Coverage that inclusive of all, regardless of migration status, PICUM recommends the following:

- Enact changes in law and policy and/or practice to open up access to health care services for children and adults with irregular or insecure residence status by addressing systemic barriers they face, whether administrative or with respect to legal entitlements.
- Ensure that accessing health services, and other vital services and supports, does not have immigration consequences for people with irregular or insecure residence status through the creation of “firewalls”.
- Design and implement - with the active input of affected individuals and communities - responsive, trauma-informed, non-judgmental and non-stigmatising services for everyone who needs them, regardless of their residence status.

Additional resources

PICUM

- 2016 [The Sexual and Reproductive Health Rights of Undocumented Migrants: Narrowing the Gap Between Their Rights and the Reality in the EU](#)
- 2017 [Cities of Rights: Ensuring Health Care for Undocumented Residents](#)
- 2020 [Data Protection and the “Firewall”: Advancing the Right to Health for People in an Irregular Situation](#)
- 2022 [The right to health for undocumented migrants](#)
- 2022 [Some lessons learned from the COVID-19 pandemic on the right to health for undocumented migrants](#)