

**PICUM**  
 PLATFORM FOR INTERNATIONAL COOPERATION ON  
 UNDOCUMENTED MIGRANTS



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EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK  
 RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME  
 الشبكة الأوروبية - المتوسطية لحقوق الإنسان



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## Access to Health Care is a Basic Human Right

### Joint Civil Society Statement on Access to Health Care Services for Undocumented Migrants in Spain

On April 20, 2012, the Spanish government issued a Royal Decree-Act which among other measures restricts the level of health care access for irregular migrants stipulated in the Foreigners Act (Ley de Extranjería). The current Foreigners Act establishes that irregular migrants registered at the municipality are entitled to access health care under the same conditions as nationals of the country. The proposed new legislation would limit access to vital health care services for irregular migrants in Spain to emergency care, maternity and child care only.

We oppose the article 3 ter. of Section I of the Royal Decree-Act 16/2012, which denies undocumented migrants the right to access healthcare services.

With this Decree-Act, an estimated 150,000 persons will be denied access to all forms of essential preventative and curative health services.

**Ahead of the Spanish Parliamentary session on May 17, 2012, a coalition of international, European and Spanish civil society and professional organisations urge Spanish Members of Parliament to respect human dignity, public health needs and medical ethics by**

**→voting against article 3 ter. of Section I of the Royal Decree-Act 16/2012 of 20 April 2012, thus upholding the right of all human beings to basic health care services.**

### ***Violation of medical professionals' ethical obligations***

The measures introduced by the Decree would require medical professionals to adopt the duty of immigration authorities and select patients based on immigration status rather than health status. Such tasks would not only be unethical from the point of view of medical professionals but also time-consuming and stressful, diverting attention away from their primary task of providing health services. Experience from other countries shows that regardless of legal entitlements, medical professionals are still likely to make efforts to meet their ethical obligations by providing services to all patients in need of care, which puts an enormous stress on doctors, hospital management and other patients and often forces doctors to commit fraud in order to hide the time and resources spent on undocumented patients.

The World Medical Association Declaration on the Rights of Patients states that “every person is entitled without discrimination to appropriate medical care... (and) physicians and other persons or bodies involved in the provision of health care have a joint responsibility to recognise and uphold these rights. Whenever legislation, government action or any other administration or institution denies patients these rights, physicians should pursue appropriate means to assure or to restore them”.<sup>1</sup>

The European Declaration of Health Professionals further affirms: “*We must never allow discrimination to adversely affect the treatment we provide. We alone are responsible for upholding our ethical obligations, and will not be dissuaded from doing so.*”<sup>2</sup>

**All patients are entitled to care and treatment to meet their clinical needs. The obligation to care for an ill person cannot be overruled by their immigration status.**

### ***International human rights obligations violated by discriminatory legislation***

The austerity measures driving the current proposal are adversely and seriously impacting the most vulnerable members of society. It is of utmost importance to uphold universal access to the right to health, which is key to the realisation of all other rights. The nature of the legal obligations of State parties is set out in the Article 12 International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR obliges

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<sup>1</sup> In principle 1a and in the preamble: <http://www.wma.net/en/30publications/10policies/l4/>

<sup>2</sup> The Standing Committee of European Doctors [http://www.cpme.be/news\\_press.php?id=99](http://www.cpme.be/news_press.php?id=99)

State Parties to abstain from enforcing discriminatory practices as a State policy and to provide equal access to health services to all persons, including undocumented migrants.<sup>3</sup>

**By introducing discriminatory limitations to the right to health care services to a specific group of persons, who previously had access to care, Spain will violate its international human rights obligations and the principle of progressive realisation of social rights.**

### ***Public health policy undermined by restricting services to undocumented migrants***

Denying access to health services for a specific group of persons undermines efforts to fight the spread of communicable diseases among the general population. Many illnesses such as tuberculosis are complicated to detect and infectious diseases are often identified when patients seek medical care for other unrelated conditions. Effective identification and treatment of communicable diseases requires access to preventative and general health services for all health needs. In order to enforce a genuine national public health policy it is essential that all persons are able to access health services for any condition, not only through specialised services for infectious illnesses or once the illness has progressed to a level of emergency, when the general public has been exposed to the illness for a length of time.

**Reducing access to health services only to the level of emergency care will have a serious negative impact on the spread of communicable illnesses in the general population and undermine all public health goals.**

### ***Emergency care access less cost-effective than preventive care***

In addition to the extra costs associated with the administrative burden of processing residence data at medical facilities and public health costs associated with the spread and treatment costs of progressed communicable diseases, it has been widely established in many EU countries that the cost of emergency care greatly surpasses the cost for primary health care services. In the UK, it has been estimated that emergency care services are three times more costly than providing primary care through general practitioner services.<sup>4</sup>

Denying access to primary and secondary health care will force undocumented migrants with simple complaints to access health care services at a very late stage through emergency services when their condition has become acute.

**The cost of not providing preventative and curative care will include an overuse of emergency care and the cost of exclusion will ultimately be much higher than inclusion.**

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<sup>3</sup> General Comment No. 14 <http://www.unhcr.ch/tbs/doc.nsf/%28symbol%29/E.C.12.2000.4.En>

<sup>4</sup> Migrants' Rights Network, Doctors of the World, "Access to Primary Health Care for migrants is a right worth defending", page 4 <http://www.migrantsrights.org.uk/files/Access-to-Health-Care.pdf>

***Civil society organisations strongly condemn any plans to segregate patients within the health care system***

Civil society strongly opposes the creation of parallel health care systems and affirms the importance of equality in accessing health care services. The creation of a separate system for undocumented migrants would undercut the basic foundations of human rights- the right to equality and non-discrimination. A parallel system would also create an enormous burden on civil society organisations that will not be able and should not have to carry the task of providing basic health care services to persons in need of medical attention.

**For more information please contact:**

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