



Health Care in

NOWHERELAND

*improving services for
undocumented migrants in the EU*

Policies on Health Care for Undocumented Migrants

in Switzerland

Country Report

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Table of Contents

Preface	3
Introduction	4
The General Migration Context	5
Total Population and Migrant Population	6
Estimated Number of Undocumented Migrants.....	7
Categories of Undocumented Migrants.....	8
Policies Regarding Undocumented Migrants	8
Debates on Undocumented Migrants.....	8
Regularization Practice, its Logic and Target Groups	9
Access to Basic Social Rights: Accommodation, Labour, Social Security and Education.....	10
Main Characteristics of the Health System	12
Main Characteristics of the Swiss Welfare Regime	12
The Health System in Switzerland	13
Financing, Services and Providers	14
Basis of Entitlement	14
Special Requirements for Migrants	14
Health Care for Undocumented Migrants	15
Relevant Laws and Regulations	15
Access to Different Types of Health Care	16
Costs for Care	17
Specific Entitlements	19
Regional and Local Variations	19
Obstacles to Implementation	19
Obligation to Report.....	20
Providers and Actors	20
Conclusions	21
Bibliography	22
Appendix	26

Preface

This study on Access to Healthcare for Undocumented Migrants in **Switzerland** was conducted in close collaboration with the EU-funded project *Health Care in NowHereLand – Improving Services for Undocumented Migrants in the EU* coordinated by the Danube University Krems in Austria. The study was commissioned by the Swiss Federal Office for Public Health (FOPH) to the International Centre for Migration Policy Development (ICMPD). In the framework of this study, the ICMPD, together with the Swiss Forum for Migration and Population Studies (SFM) at the University of Neuchâtel and the Trummer & Novak-Zezula OG in Vienna, collected information on policies towards undocumented migrants, practices of health care provision, health care needs and strategies of undocumented migrants in Switzerland, and performed an assessment of selected practice models.

The EU project NowHereLand

Undocumented migrants gain increasing attention in the EU as a vulnerable group that is exposed to high health risks and challenges public health. In general, undocumented migrants face considerable barriers in accessing services. Health of undocumented migrants is highly at risk due to difficult living and working conditions often characterised by uncertainty, exploitation, and dependency. In a state-control logic, national regulations often severely restrict access to health care for undocumented migrants. At the same time, right to health care has been recognized as human right by various international instruments ratified by European Countries (PICUM 2007; Pace 2007). This often opens a paradox for health care providers: if they give care, they may act against legal and financial regulations, if they don't give care they violate human rights and exclude the most vulnerable.

The EU Project 'Health Care in NowHereland' works on the issue of improving health care services for undocumented migrants. Experts from research and practice identify and assess contextualised models of good practice of health care for undocumented migrants. It builds upon compilations of

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

With its title, the project introduces the image of an invisible territory of Nowhere-land that is part of the European presence 'here and now'. How health care is organised in NowHereland, what are policy frameworks that influence health care provision and who are the people that live and act in this NowHereland are central question raised.

Introduction

Switzerland is a confederation of 26 cantons and 2,740 municipalities comprising four officially recognised linguistic groups (German, French, Italian and Rhaeto-Romanic). Switzerland has 7.7 million inhabitants and one of the largest shares of foreigners in Europe.

Surrounded by EU Member States (except for Liechtenstein) the Federal State of Switzerland is not a Member State of the European Union but has joined the Schengen Area on 12 December 2008.

The Swiss political system is highly federalised, operates on a consociational basis and puts strong emphasis on direct democracy, cantonal autonomy and cantons' participation in all phases of political will. The system of consociational democracy promotes the balanced representation of various interests and the emphasis on direct democracy entails that a great number of actors are involved in the consultation process preceding law amendments. Political decision making is thus characterized by a search for compromise between different positions represented by the cantons, political parties, interest groups, trade unions, expert commissions, and NGOs (D'Amato 2010). This highly decentralised system has resulted in lengthy decision-making processes, and an often complex distribution of powers between the federal state, the cantons, and municipalities (D'Amato/Gerber/Kamm 2005, 59f; Baumann/ Stremlow/ Strohmeier 2006).

The federal level is represented by the Swiss Parliament (consisting of the National Council¹ and the Council of States²) and by the Swiss Government (the Swiss Federal Council³). Federal level policy making includes the areas of civil and penal legislation, international politics, national defence, and social security (e.g. social insurances) and increasingly deals with issues such as health, immigration and integration. Other areas are mainly regulated on the cantonal level such as culture, education, direct taxation, and social welfare benefits (Baumann/ Stremlow/ Strohmeier 2006; Mahnig/Wimmer 2003).⁴ In addition, in several areas as e.g. the health system, the role of private enterprises has been encouraged for supporting the government and the cantons in fulfilling their duties. While the Federal Government issues outline laws in its areas of competence, these are executed by the largely financially autonomous cantons and municipalities (FOM 2009b, 24), which enjoy great freedom with regard to the implementation of federal regulations.

Concerning immigration, granting residence permits, implementing integration and law enforcement measures is mainly the cantons' responsibility, while Swiss asylum policy is coordinated on the federal level. The Aliens Police operates exclusively under cantonal immigration authority (D'Amato 2010, 113). In the area of social security the cantonal authorities implement federal social insurance laws and monitor the obligation to 'basic health insurance'.

This distribution of powers has resulted in a variety of different cantonal regulations and practices regarding access to basic social rights particularly for undocumented immigrants (see Ruspini 2009, Achermann/Efionayi-Mäder 2003).

¹ *Nationalrat*, representing the people.

² *Ständerat*, representing the cantons.

³ The Swiss Federal Council is elected by the parliament on a four-years-basis.

⁴ Federal Constitution of the Swiss Confederation, Article 3, and Article 44 (1)

The General Migration Context

After the Second World War, the Swiss immigration policy was mostly oriented towards temporary labour immigration channelled through a so-called 'rotation model'. Until 1991, Switzerland implemented a seasonal-worker scheme (*Saisonnier-Statut*) based on the recruitment of unskilled and semi-skilled foreign workers of which most originated from Spain, Italy, Portugal, Turkey, and the former Yugoslavia.⁵ Under this scheme, immigrants were not entitled to family reunification and could only obtain the right to long-term residence in the country after several consecutive working-seasons (Laubenthal 2007b, 119).

The 1990s finally marked the gradual abandonment of the seasonal-worker scheme. The economic downturn, increasing unemployment rates and a significant increase in asylum seekers, particularly from former Yugoslavia, created a climate of public unrest (Riaño 2010). In this context and in the aim to formulate an immigration policy that would comply with European Union policy, Switzerland introduced the so-called 'three-circle' policy in 1991. This model divided foreigners into three groups: the inner circle included nationals of the European Union and EFTA countries which would enjoy first immigration priority, followed by citizens from the USA, Canada, Australia, and New Zealand as represented in the second circle, and finally the third circle including all other nationalities who were allowed immigration only in exceptional cases (Federal Council, 1991; FOR 2004, 23; D'Amato/Gerber/Kamm 2005).

Consequently, this policy created precarious situations for several groups of foreigners now classified under the third circle. A significant number of former seasonal workers, who had not yet obtained the right to long-term residence, could no more renew their permit and were denied consolidation of their residence status. Seasonal workers from former Yugoslavia, now part of the third circle, were particularly affected, as many were not able to return due to the war in former Yugoslavia, but remained in the country unlawfully or applied for asylum (Ruspini 2009). In 1996 this concerned more than 20,000 seasonal workers from former Yugoslavia (Leuenberger and Maillard 1999, 79 as quoted by Laubenthal 2007b, 120). At the same time, despite the above mentioned restrictions, an increasing number of foreigners had managed to qualify for a long-term residence status at that time. Thus, family reunion constituted a main mode of immigration to Switzerland throughout the 1990s (FOS 2009d).

As an effect of the abolition of the seasonal workers status and the ongoing labour market crisis, the foreign net migration rate almost decreased to zero in 1996 and 1997 (see Chart 1 below). In 1998 a 'dual system' of recruiting foreign labour was introduced, which improved the rights of EU and EFTA immigrants, while at the same time also allowed for the entry of skilled immigrants from third countries (Riaño/Wastl-Walter 2006, 10). Following this, from 1998 to 2007 family reunification and high-skilled labour migration were the quantitatively most important immigration schemes to Switzerland (see FOS 2008a: 21). Regarding the current immigration policy, as regulated under the Agreement on the Free Movement of Persons (FZA) between Switzerland and the European Union, citizens of EU Member States and the area of the European Free Trade Association (EFTA) enjoy free movement since 2002, if they can demonstrate sufficient income and a health insurance.⁶ In 2007, immigration from the EU-27 and EFTA countries accounted for almost 70% of total net migration (FOS 2008a). Moreover, nationals of EU and EFTA countries are granted priority admission to the Swiss labour market. Only a limited number of management level employees, specialists and other qualified employees are admitted from third countries, as these foreigners remain subject to the Federal Act on Foreign Nationals (AuG) and its regulatory statutes, particularly the Decree on

⁵ Efonayi, D.; J.M. Niederberger, and Ph. Wanner (2005) 'Switzerland Faces Common European Challenges'. Available at: <http://www.migrationinformation.org/USfocus/display.cfm?ID=284> (October 2010).

⁶ Immigration for the purpose of work for citizens of the EU 15 is no more subject to quotas since 1st June 2007 (Integrationsbüro EDA/EVD 2002).

Admittance, Residence and Employment (VZAE).⁷ Third country nationals may be granted a residence permit in Switzerland only for the purpose of professional labour and in the course of family reunification.

Total Population and Migrant Population

Switzerland has 7.7 million inhabitants and one of the largest shares of foreigners in Europe. In 2008, the share of foreigners in the total resident population amounted to 21.7% (FOS 2009). The cantons with the highest share of foreign resident population are Geneva (38.4%), Basel-city (31.3%), Vaud (30%), Tessin (25.9%), and Zurich (24.1%) (FOS 2008a).

Noteworthy, throughout the 1990's the number of female immigrants exceeded that of male persons (see Chart 1). This trend can be attributed to an increase of immigration from new regions of origin, such as Latin America and Southeast Asia, for which the share of female migrants is particularly high (FOR 2004: 29). Although their share is decreasing since 1991, the majority of Swiss immigrants still originates from European states. In 2007, half of all foreign residents originated from Germany, Portugal, France, Serbia and Montenegro, and Italy (FOS 2008: 24) and the majority of the foreign resident population (70.8%) was in working age (between 20 and 64 years) (FOS 2008: 17).

Table 1 Immigration of foreign nationals* to Switzerland by reason of immigration, 2000-2009

	2000	2002	2004	2006	2008	2009
Occupation	21 108	30 871	34 120	41 056	78 537	60 543
Family reunion	38 110	43 209	38 836	37 601	48 985	43 617
Training and qualification	10 480	14 022	13 003	13 623	15 636	15 289
Recognised refugees	1 465	1 184	1 007	1 339	1 868	2 000
Other	2 098	6 227	4 201	3 838	5 834	4 486
Total	73 261	94 667	90 310	96 553	149 674	124 933

Note: *) Including short term permits for more than 12 months and status change in asylum process.

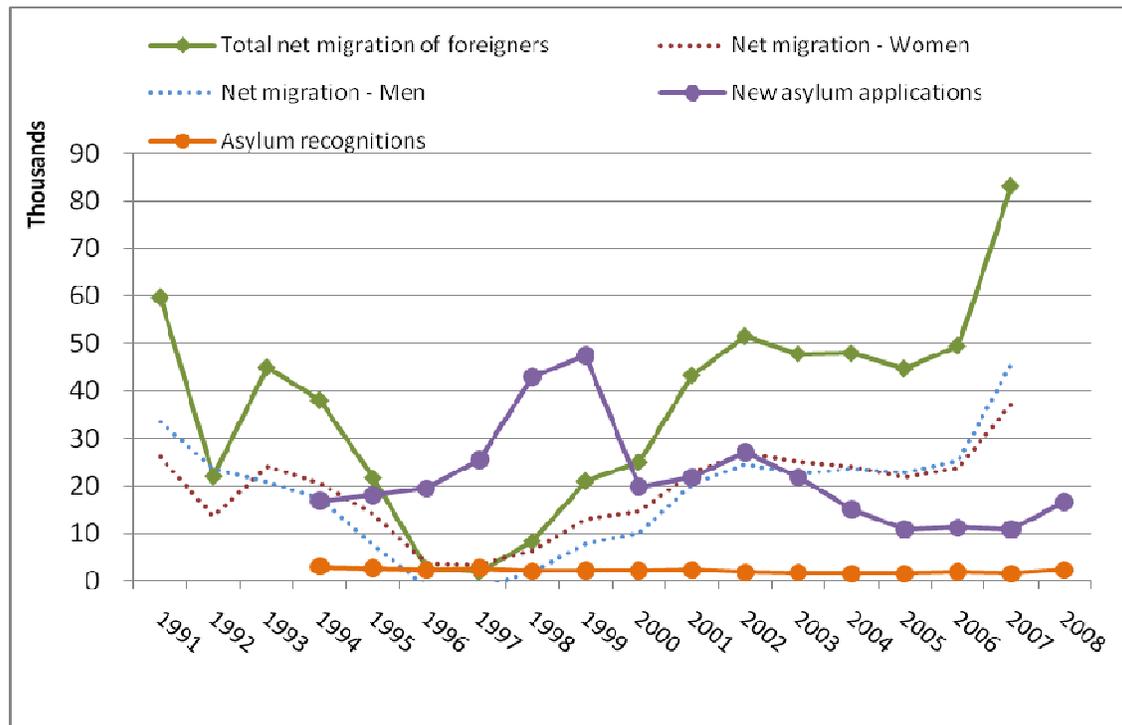
Source: BFS-ZAR (Zentrales Ausländerregister):

<http://www.bfs.admin.ch/bfs/portal/de/index/themen/01/07/blank/data/01.Document.88349.xls>
(20.12.2010)

Apart from the above mentioned changes in the general immigration policy, the 1990s were characterised by increasing asylum related immigration. In 1991 and 1999 the number of asylum applications peaked with over 40,000 new applications (see Chart 1 below), and the number of persons in pending proceedings reached a maximum of 104,739 persons in 1999 (FOM 2009a). In response to rising asylum applications and an increasing number of persons who, after a negative decision did not leave the country or could not be returned for various reasons, regulations on asylum were increasingly restricted (Achermann 2009, 94).

⁷ Verordnung über Zulassung, Aufenthalt und Erwerbstätigkeit (VZAE), in force since 1.1.2008.

Chart 1 Foreign net migration by gender, asylum applications and recognitions in Switzerland, 1991-2008



Sources: FOS (2008c); FOM (2009a), Asylstatistiken, Zemis

Note: The number on foreign net migration excludes persons with a short-term permit (permit L; < 12 months), and asylum seekers (permit F or N).⁸

Estimated Number of Undocumented Migrants

The extent of persons unlawfully residing in Switzerland can only be estimated. The most recent estimate is provided by a study conducted on behalf of the Federal Office for Migration in 2005, which refers to 80,000 – 100,000 undocumented migrants i.e. persons residing in Switzerland without valid residence documents for an unspecified period of time (Gfs.bern 2005: 58).⁹ The study concludes that the larger part of the unlawfully resident population in Switzerland consists of former seasonal-workers from third-countries who could not renew their residence permit after the introduction of the ‘three-circle’ policy in the 1990s but remained in the country. A report on ‘illegal migration’, published by the former Office for Migration (IMES) in 2004, estimated the number of persons staying *and/or* working irregularly in Switzerland between 50,000 and 300,000 persons (IMES 2004, 10; see also Kaeser 2009, 53). For the year 2008 the Federal Office for Migration refers to 5,302 persons who were stopped when crossing the border illegally, 1,247 foreigners were detected for irregular employment. (FOS 2009d).

Another group is composed by unsuccessful asylum seekers. In 2003, the actual abode of 10,300 asylum seekers was not known (*verschwundene Asylsuchende*) to enforcement authorities. It was concluded that these persons may have either left the country without documentation or may have remained in the country undetected after a negative decision on their asylum

⁸ For the different residence permits, see website of the see the website of the Federal Office for Migration: http://www.bfm.admin.ch/bfm/en/home/themen/aufenthalt/nicht_eu_efta.html (20.12.2010).

⁹ The estimate was based on a questionnaire answered by the cantonal immigration authorities and refers to summer 2004.

application (IMES 2004, 4). Since 2003 this number has decreased to 2,776 asylum seekers whose abode was unknown in 2008 (FOS 2009d).

Furthermore, according to data from the special programme *Humanitarian Action 2000* an estimated number of 15,000 non-removable (including persons without any residence status) and long term resident asylum seekers were granted humanitarian residence (Ruspini 2009, 98). Between 2001 and 2008, 3,694 applications for a residence permit for unlawfully staying migrants in *acute individual hardship* were lodged by the cantons, out of which 2,123 persons received a positive answer (Federal Office for Migration quoted by Ruspini 2009, 97).¹⁰

Categories of Undocumented Migrants

The new Swiss Federal Act on Foreign Nationals (AuG), which came into force in 1 January 2008, prohibits unlawful entry, exit, residence or work in the country (article 116 AUG) as well as the promotion of these activities through third parties (article 115 AUG). The scope of this legislation de facto only refers to third country nationals (persons from non-EU or non-EFTA states).

In the Swiss context persons residing in Switzerland without valid residence documents for an unspecified period of time are referred to as *sans-papiers*.

Under the current immigration regime, the following pathways of becoming undocumented can be distinguished in Switzerland:

- Persons who unlawfully entered Swiss territory;
- Persons who legally enter Swiss territory but remain in the country after the validity of their visa/residence permit has expired ('Overstayers');
- Persons who, after legal amendments or changes in their socioeconomic position (e.g. after loss of job or early divorce in the case of family reunion/marriage migration etc.), cannot renew their residence permit but remain in the country;
- Unsuccessful asylum seekers who 'disappear' during their asylum procedure, receive a negative decision or whose application was dismissed without entering into substance (*Nichteintretensentscheid*, NEE) and who should thus leave the country within a set time-limit but remain in the country or cannot be removed for technical or other reasons (see IMES 2004, Achermann/Chiementi 2006; Federal Office for Refugees 2004: 14).

Policies Regarding Undocumented Migrants

Debates on Undocumented Migrants

The issue of irregular migration became a new focus of Swiss public and political discourse on immigration during the 1990s when asylum figures were exceptionally high (see D'Amato/Gerber/Kamm 2005). In the beginning of the 1990s a major political debate on 'illegal migration' sparked off from two popular initiatives (*Volksinitiative*) launched by the Swiss Democratic Party claiming 'for a reasonable asylum policy' and the Swiss Peoples Party demanding increased efforts 'against illegal immigration'. Both initiatives stipulated that asylum

¹⁰ See also Schweizerische Flüchtlingshilfe (2007) Statistische Angaben zur Härtefallregelung im Asylbereich, available at: <http://www.fluechtlingshilfe.ch/news/medienmitteilungen/haertefallregelung-muss-gerechter-werden/statistische-angaben-zur-haertefallregelung-im-asylbereich/?searchterm=H%C3%A4rtefallregelung> (20.12.2010).

applications of persons who had entered the country unlawfully should no more be considered. However, the first initiative was declared invalid by Swiss parliament¹¹ while the second initiative was rejected by the Swiss population¹². In the same period the Federal Council granted provisional admission to 13,000 persons from Bosnia during war in former Yugoslavia. Not only Bosnian war refugees benefitted from this measure but also illegally resident persons from former Yugoslavia who were affected by general immigration restrictions in the 1990s, such as former seasonal workers, persons who had overstayed their permit and unsuccessful asylum seekers (see Skenderovic/D'Amato 2008, 187f).

Already from the beginning of their implementation, immigration restrictions as introduced with the three-circle model were widely criticised as being racially discriminative by assessing immigrants exclusively on the basis of their nationality. In this context, at the end of the 1990s first initiatives were launched to 'urge the Swiss government to revise immigration policies, to stop cultural and gender discrimination, and to devise measures that helped improve the precarious situation of many foreigners' (Riaño/Wastl-Walter 2006, 10). After the three-circle model showed its effects and an increasing number of former seasonal workers became undocumented, a broad range of actors from the asylum and antiracism movement, industry, Swiss trade unions and other interest groups initiated a pro-regularization protest. Cantons which were faced with the fact that a number of former temporary workers who could no longer renew their seasonal work permits, but, at the same time, could also not return to their home country and thus remained undocumented, showed sympathies with this mobilisation. In Switzerland cantonal administrations are responsible for carrying out expulsions, have powers in issuing residence permits and play an important role in supporting regularisation claims (Laubenthal 2007b). When in 1996, for example, the federal authorities rejected the initiative of the canton of Vaud to grant residence to former seasonal-workers, Vaud decided though not to pursue with forced return, but instead renewed the permits of about 200 former seasonal workers and finally regularised their stay in 2000 (FOR 2004, 15). Similarly, when a group of former seasonal-workers from Kosovo formed the alliance *En quatre ans on prend racine* to protest against the expulsion of 3,000 former seasonal workers and demanded the right to stay, the canton Vaud urged the federal authorities to 'evaluate the migrants' claims generously' and effected the granting of residence permits to those who had lived more than eight years in the canton (Laubenthal 2007b, 120-121; FOR 2004, 15).

This mobilisation, which had started in the French-speaking cantons, soon developed into a nation-wide pro-regularisation movement which was supported by a wide range of actors and cantonal administrations and initiated a parliamentary debate on improving the rights of undocumented migrants in Switzerland.

Regularization Practice, its Logic and Target Groups

The Federal State of Switzerland rejects regularization on principal grounds (See Ruspini 2009, 99). However with regard to the asylum policy, since December 2001 federal law allows cantons to apply a hardship provision to unlawfully staying persons in a situation of 'acute individual hardship' (*schwerwiegender persönlicher Härtefall*) if return is not feasible or not reasonable; since January 2008 the cantons may also apply this provision to rejected asylum seekers.¹³ If and how cantons interpret and apply the provision of 'acute individual hardship' varies considerably between the cantons. Between 2001 and 2008, 2,123 persons received a positive answer under this provision (Federal Office for Migration quoted by Ruspini 2009, 97). Until 2004 90% of all applications were forwarded mainly by the canton of Geneva, Vaud, Fribourg

¹¹ See: *'Eidgenössische Volksinitiative „für eine vernünftige Asylpolitik“'*, available at: <http://www.admin.ch/ch/d/pore/vi/vis223.html> (20.12.2010).

¹² See: *'Eidgenössische Volksinitiative „gegen die illegale Einwanderung“'*, available at: <http://www.admin.ch/ch/d/pore/vi/vis238.html> (20.12.2010).

¹³ The criteria considered are: duration of stay, state of integration, health status, existing familial relations in Switzerland and the country of origin, school enrolment of children, or status of employment.

and Neuchâtel, and by Bern (FOR 2004, 42), while other cantons have not applied this provision at all.¹⁴

Agreeing on the limitations of this provision, already in 2002 members of the National Council and representatives of human rights, solidarity and trade union organisations, as well as the *Sans-papier* movement, founded the 'Platform for a round table on sans-papiers' to discuss the agenda on this specific group or persons beyond the regulation on 'acute individual hardship'. In addition, access of undocumented migrants to health care was given priority on the political agenda of the Federal Office of Public Health, which explicitly refers to the situation of undocumented migrants in its second national *Strategy Migration and Health 2008-2013*. In this framework, the Office commissioned a *national platform on health care for sans-papiers*¹⁵ which aimed at enabling exchange of different health care experiences of organisations and persons working with undocumented migrants.

Access to Basic Social Rights: Accommodation, Labour, Social Security and Education

Undocumented immigrants in Switzerland in principle enjoy several economic and social rights which are made explicit under title II 'Fundamental Rights, Citizenship and Social Goals' (Article 41) of the Federal Constitution of the Swiss Confederation and other specific legal provisions. These rights include labour rights, access to social insurances including health insurance, access to education (compulsory school attendance) and to emergency aid (i.e. food, shelter, urgent medical treatment).

However, undocumented migrants face a number of practical obstacles when accessing fundamental rights as a direct consequence of their (lacking) immigration status:

Housing

In regard to housing for example renting implies registration at the competent cantonal authority¹⁶. Thus, avoiding the risk of being identified, undocumented migrants primarily arrange for accommodation informally.

Education

In the area of education school attendance is compulsory in Switzerland for the first nine years of education. In March 1991 the former Federal Office for Aliens Affairs (IMES) issued a circular on 'school enrolment of foreign children without valid residence permit' by which the cantons were summoned to generously handle the issue of undocumented children in school (IMES 2004: 28). There is consensus among all cantons to support undocumented children's school attendance (Efionayi-Mäder/Cattacin 2001, 14). A report by the Swiss Refugee Aid pointed to problems in the canton of Bern, which restricted access of undocumented children to primary school (Trummer 2008, 7). In particular, children of rejected asylum seekers and persons with NEE receiving state emergency aid (*Nothilfe*) were affected. While it seems that these problems have been resolved in Bern, the situation is still problematic in the canton of Tessin (Efionayi-Mäder 2010, 62). Regarding secondary education, there is no right for undocumented teenagers to enter an apprenticeship; a respective motion was rejected by the Political Institutions Committee in October 2010.¹⁷

¹⁴ See also Schweizerische Flüchtlingshilfe (2007) Statistische Angaben zur Härtefallregelung im Asylbereich, available at: <http://www.fluechtlingshilfe.ch/news/medienmitteilungen/haertefallregelung-muss-gerechter-werden/statistische-angaben-zur-haertefallregelung-im-asylbereich/?searchterm=H%C3%A4rtefallregelung> (20.12.2010).

¹⁵ <http://www.sante-sans-papiers.ch/>

¹⁶ See VZAE, art. 18

¹⁷ See *Jugendliche Papierlose sollen kein Recht auf eine Berufslehre erhalten*. Available at: <http://www.parlament.ch/d/mm/2010/Seiten/mm-spk-n-2010-10-22.aspx> (31.3.2011).

Work

Concerning labour rights, Swiss labour law entitles all persons in a de facto employment relationship¹⁸ to minimal labour standards. This includes the right to a salary, paid vacation, reasonable period of notice, paid sick leave, access to the full range of social security benefits i.e. retirement, invalidity, obligatory accident insurance as well as old-age, survivors and invalidity insurance (UNIA 2007). However, as labour courts have to report the unlawful residence of a claimant to the Federal Office for Migration, in practice undocumented migrants can hardly realise their rights without risking detection (Achermann/Chiementi 2006, 31). Undocumented migrants may receive benefits if they legalize their stay or return to their country of origin (see Efiionayi-Mäder/Schönenberger/Ilka 2010). Although in some cantons the share of undocumented migrants in registered employment is estimated to be comparatively high (such as in Geneva), the majority of undocumented migrants is assumed to work in unregistered jobs (e.g. women working in private households) and thus, even if formally entitled, face difficulties in receiving benefits related to accident insurance or other forms of social security benefits (Achermann/Chiementi 2006, 31f).

Help in Situation of Distress (Art. 12, Constitution)

Resulting from the unwritten fundamental right to the minimum subsistence recognised by the Federal Tribunal in 1995, the right to obtain help in situations of distress is explicitly rooted in article 12 of the Federal Constitution and guarantees to persons in situations of distress 'the right to be helped and assisted and to receive the essential resources to lead a dignified human existence'.¹⁹ Article 12 of the Federal Constitution also enshrines the right to receive 'basic' health care, irrespective of one's nationality, residence or insurance status. Accordingly, undocumented migrants have the right to access and benefit from healthcare services (to a lesser extent than those provided by the Federal Health Insurance Law) even without insurance coverage.

¹⁸ An employment relationship is defined as work for a private person or a company for wage, even if only verbally agreed.

¹⁹ Article 12 of the Federal Constitution of the Swiss Confederation, available at: <http://www.admin.ch/ch/e/rs/101/a41.html> (31.3.2011).

Table 2 Overview on access to basic social rights for undocumented migrants in Switzerland

Type of right	Access	Conditions	Identified obstacles to access rights
Housing	NO	Renting requires registration at the cantonal authority	n.a.
Education	YES	9 years compulsory education	Cantonal legislation partly lacking
Labour rights	YES	Labour rights according to tax and social security requirements irrespective of residence status	Enforcement of right may result in detection
Social security	YES	Right to be insured with old-age, sickness, survivors and invalidity, and unemployment insurance for all employed persons	Actual claiming of benefits (unemployment, old-age, and invalidity) possible only with legal residence status, or when returned to the country of origin.
		Obligatory health insurance for all persons residing in Switzerland for more than 3 months; allows access to basic health care	High costs; different practices of health insurers; different cantonal practices regarding implementation and monitoring
Basic subsistence	YES	Essential resources to persons in distress, including 'basic' health care irrespective of residence or insurance status according to article 12 of the Federal Constitution	n.a.

Main Characteristics of the Health System

Main Characteristics of the Swiss Welfare Regime

The welfare regime of the Federal State of Switzerland developed from a system commonly referred to as 'residual' or 'liberal' (Armingeon 2001, Bonoli 2004), in which the market acts as service provider. In this logic, public obligation enters only where private initiative fails (Esping-Anderson 1990: 26-27 and 41-44). This explains the important role that private actors (i.e. competing health insurance companies) play also in the current Swiss health system.

Following demographic and socio-economic changes during the 1990s reforms aimed at reducing the costs that social security payments invoke to the Federal State, the cantons and the municipalities, but also at increasing social security coverage of new risk groups. Thus, in 1996 health insurance was made mandatory for the entire resident population. At the same time targeted subsidies for persons in need were introduced, while global state subsidies were abandoned (principle of 'social accuracy' - *Soziale Treffsicherheit*) (Obinger 1998, Bonoli 2004).

In order to understand the dynamics and results of the reforms over the last decades one has to take into consideration that Swiss welfare is strongly influenced by the macro-institutional context of power fragmentation and its main features of direct democracy and federalism. Combined, those two factors have resulted in large regional variations and seemingly insurmountable barriers to nation-wide reform (Crivelli et al. 2007). Social welfare support still is to a large extent a cantonal and municipal task, as financing and executive liability is delegated to the 26 cantons.

Generally, Swiss social security system encompasses five areas: old-age, survivors' and invalidity insurance; protection against the consequences of illness and accidents; income compensation allowances in case of military service and in case of maternity; unemployment

insurance; family allowances.²⁰ The Swiss three-pillar pension system is composed by a compulsory insurance for all persons domiciled or engaged in paid employment in Switzerland, mandatory occupational benefits and voluntary individual provident measures.²¹ The 1st and 2nd pillars are financed by contributions from employers and employees, as well as – for 1st pillar - subsidies by the confederation and, partly by cantons.²²

Apart from the social insurances regulated on federal level, the cantons support persons whose basic needs are not covered by social insurances through social assistance (*Sozialhilfe*) or emergency aid (*Nothilfe*) that contain financial and/or in-kind benefits and are regulated on cantonal level. In any case, as there is no nationally uniform regulation for social welfare benefits, entitlements and provision practices differ across the cantons.²³

The Health System in Switzerland

The basic principle of ‘federalism’ guiding Switzerland’s political system also applies to the Swiss health care system which is a decentralised system in which many actors are involved. With the changes of the statutory health insurance in 1996, the regulatory powers of the federal government over the health system have considerably increased and have fundamentally affected the structures for financing and delivering health care on the cantonal level (European Observatory 2000). On the federal level, the public health agenda falls under the competence of the Federal Department of Home Affairs (EDI) under which the Swiss Federal Office of Public Health (FOPH) is responsible for developing national health policies and strategies as well as for monitoring their implementation on the cantonal level.

The 26 cantons are responsible for the implementation of federal laws, regulation of health matters (e.g. monitoring the implementation of insurance obligation), provision of health care (e.g. admission of providers, hospital planning, subsidising organisations etc.), disease prevention and health education (European Observatory 2000). They may delegate parts of their responsibility to the municipalities (e.g. support to particular groups of persons such as elderly persons, pregnant women and mothers or children in schools). Thus, cantonal policies decisively influence the extent to which persons are able to access health care at their place of residence. However, little is known about cantonal practices regarding undocumented migrants’ access to health care and health insurance (see section on [‘Practices of Insurers’](#) below).

Obligatory Basic Health Insurance

As Switzerland applies a global health insurance scheme that is obligatory for all persons residing in Switzerland longer than three months the scheme also includes undocumented migrants. Statutory basic health insurance is offered by a number of health insurance funds and private insurance companies which comply with the requirements of the health insurance law. Monitored by the Federal Office of Public Health, all registered insurance companies offering basic coverage must be non-profit.²⁴ Residents have free choice among insurers, who are in turn obliged to accept all applicants for the basic package of benefits. Individual insurance contributions can only vary by age²⁵ group and regionally (see Obinger 1998: 39). Apart from

²⁰ See: Federal Social Insurance Office, Switzerland: <http://www.bsv.admin.ch/themen/ueberblick/00003/index.html?lang=en> (23.11.2009).

²¹ Swiss social security system covers five main areas: old-age, survivors’ and invalidity insurance; sickness and accident insurance; income compensation allowance in case of maternity or military service; unemployment insurance; and family allowances. (“Social security in Switzerland”, <http://www.bsv.admin.ch/themen/ueberblick/00003/index.html?lang=en> (23.11.2009).

²² Supplementary benefits to 1st pillar.

²³ See *Schweizerische Konferenz für Sozialhilfe (SKOS)*, <http://www.skos.ch/de>

²⁴ Supplemental coverage may be for-profit. Thus, often insurance companies offer both compulsory and supplementary insurance policies.

²⁵ Children up to the age of 18 have to pay only half of the monthly insurance premiums. See also chapter [‘Costs for Care’](#) below.

the obligatory basic health insurance, employers must register their employees with occupational accident insurance, which also covers non-work related accidents. As already mentioned above, the right to work-related social security is not based on having a work permit, but on the existence of a factual employment relationship.

Financing, Services and Providers

The Swiss health system is mainly financed by individual contributions (66.8%: including insurance contributions and patient co-payments, as well as employees' contributions), state subsidies (26.8%) and employers contributions (6.4%) (FOS 2009c, 23).

Main health providers for medical care are office-based general practitioners (GPs), public hospitals or private clinics. Basic insurance covers both, treatment by general practitioners and specialist care. Patients generally are free to choose any GP who would refer them to specialists, if needed, but may also make use of specialists in an ambulatory care setting (European Observatory 2000, 43).

Services Provided within the Mainstream System

Basic health insurance covers 'services provided in the event of sickness or an accident (diagnosis, treatment, medical care) and maternity care' (see AVS/AI 2009). The basic set of benefits that equally applies to all insured persons thus includes:

- primary care,
- secondary care (both outpatient and inpatient care),
- pre-natal and post-natal care including nursing counselling and birth,
- reproductive care including abortion within the first three months of pregnancy,
- psychotherapy if prescribed by a GP,
- preventive measures (e.g. mammography for certain risk groups, gynaecological preventive check-up every three years, screening for babies and children, basic vaccinations for children and elderly persons),
- prescribed medical rehabilitation measures.

Dental treatment is as a principle not covered by basic health insurance.

Basis of Entitlement

The basis of entitlement to health care is the mandatory health insurance for all persons residing in Switzerland. As a principle, insurance companies are obliged to accept everyone. Cantons have to ensure that all persons residing on their territory are covered by basic health insurance.

All persons gainfully employed may claim appropriate treatment for the consequences of an accident and occupational diseases under related insurance schemes.

Persons without basic health insurance are entitled to 'basic' health care on the basis of article 12 of the Federal Swiss Constitution (see also [Access to Different Types of Health Care](#)).

Special Requirements for Migrants

Following the obligatory basic health insurance, effective since 1996, everyone residing in Switzerland has the right and the duty to take out basic health insurance, if not covered by health insurance in another EU or EFTA country (except for RO and BU) or a country

Switzerland has concluded bilateral social security agreements with. Asylum seekers are registered with the basic health insurance during their asylum procedure.

Health Care for Undocumented Migrants

Relevant Laws and Regulations

Based on the Federal Constitution of the Swiss Confederation (article 12 and 41) every person residing in Switzerland is granted access to basic healthcare. Article 12 of the Constitution – the ‘right to assistance when in need’²⁶ – defines the minimum level of assistance necessary for survival and for leading a life in human dignity. This right cannot be restricted and applies to every person irrespective of residence or insurance status. Moreover, the federal state and the cantons are obliged by virtue of article 41b of the Federal Constitution (‘Social Objectives’) to ensure that ‘everyone has access to the health care that they require’.²⁷ Article 12 does not define the particular services or benefits to be allocated in order to ensure the right to assistance when in need, but the cantons and municipalities are responsible to transpose article 12 into their respective bodies of law, which may well exceed the absolute minimum threshold set in article 12. Moreover, healthcare providers who refuse to offer assistance in case of emergency are punishable under criminal law.²⁸ This is also supported in a statement by the Swiss National Advisory Commission on Biomedical Ethics who emphasizes that health professionals have a ‘moral duty’ to provide medical assistance to persons in distress, irrespective of their residence status and irrespective of any political regulations.²⁹

With regard to health care, the main instrument to transpose article 12 of the Federal Constitution is the Public Health Insurance Law. Undocumented migrants, as any person present in Switzerland for more than 3 months³⁰ have the obligation and the right to contract a health insurance. The Public Health Insurance Law makes no distinction in regard to the residence status of the person staying in Switzerland. Undocumented migrants under the statutory health insurance have access to basic health care. Under the Public Health Insurance Law, insurance companies offering compulsory health insurance are obliged to accept all applicants for the basic package of benefits irrespective of individual risk related to e.g. gender, solvency, or residence status (see Obinger 1998: 39). In addition, according to Swiss accident insurance Law (*Bundesgesetz über die Unfallversicherung*) all persons gainfully employed in Switzerland must be insured by their employers against risk of accident and occupational disease. This obligation also applies to undocumented migrants in an employment relationship.³¹

In order to register with an insurance company to take out basic health insurance, applicants have to provide their full name, date of birth, a contact address and a bank or post account (bank account holder must not necessarily be the person insured). In case the applicant’s residence is not formally registered, the actual domicile is to be considered as place of residence. In December 2002 the Federal Social Insurance Office issued an order by which

²⁶ Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 17 May 2009), available at: <http://www.admin.ch/org/polit/00083/index.html?lang=en> (20.12.2010); Article 12: ‘Right to assistance when Persons in need and unable to provide for themselves have the right to assistance and care, and to the financial means required for a decent standard of living.’

²⁷ Article 41b of the Federal Constitution of the Swiss Confederation.

²⁸ Article 128 Swiss Penal Code

²⁹ Swiss National Advisory Commission on Biomedical Ethics (*Nationale Ethikkommission im Bereich Humanmedizin*), Stellungnahme Nr.8/2005 ‘Medizinische Betreuung ist Pflicht’.

³⁰ Exceptions are listed in article 2ss of the Ordinance on health insurance of 27 June 1995, available at: http://www.admin.ch/ch/f/rs/c832_102.html (11.2.2011).

³¹ This includes: home workers; apprentices; trainees and voluntary workers; persons working in workshops for apprentices and the disabled; household staff; cleaning staff employed in private households (see: AVS/AI 2009, 75).

insurance companies are encouraged – under the threat of sanctions - to equally accept applicants without legal residence status.³² In the same month, the Federal Social Insurance Office and the Federal Office of Public Health, in a communication to the cantonal governments, reiterated cantonal responsibility towards monitoring the insurance obligation and ensuring basic health care for all residents, also undocumented migrants.³³ Moreover, in 2005 the Swiss Federal Court³⁴ ruled that insurance companies also have to admit persons retroactively, i.e. after serious illness or a hospital sojourn, if the person has been a resident in Switzerland at the time of treatment.

In March 2010, a motion by a representative of the Swiss Peoples Party (*SVP*) has opened a debate on the right of undocumented migrants to health insurance. The motion claimed for excluding undocumented migrants from basic health insurance by questioning whether the idea of solidarity of the social health insurance was not unduly strained and by pointing to the fact that health insurance coverage conflicts with the duty of the state to control immigration. The Federal Council rejected the motion by clarifying that access to high quality care for the entire population represents a major social progress that should not be restricted.³⁵ Moreover, access to basic health care is a fundamental right protected by the Swiss Federal Constitution, and cannot be denied to any person on Swiss territory.

Access to Different Types of Health Care

As Switzerland applies mandatory health insurance undocumented migrants are entitled to the basic set of benefits included in the insurance package, that is offered to all persons resident in the country including out- and inpatient medical treatment, prescribed medication, care for pregnancy and birth, as well as treatment in case of accident. However, evidence shows that not all undocumented migrants may be able to take out health insurance in practice.

On the basis of the Federal Constitution of the Swiss Confederation (Article 12) all persons are entitled to ‘assistance when in need’, including all ‘essential resources to lead a dignified human existence’. As there is no exact definition, the scope of health care under this provision is subject to interpretation and debate on whether health care should be provided only in emergency cases (i.e. life-threatening situations) or beyond. The Federal Tribunal in its jurisdiction refers to ‘basic medical care’ (*medizinische Grundversorgung*).³⁶ This is also supported by the FOPH, who clearly states that ‘assistance when in need’ is to be interpreted much broader than emergency help and thus, health care provided should go beyond mere emergency care.³⁷ Furthermore, experts such as Kiener and von Büren (2007, 13f) confirm that the right to assistance also applies to non-emergency cases. In practice, the type of services provided depends on the individual patient and has to be assessed by the health staff in charge on a case-by-case basis (see also Efionayi-Mäder et al. 2010, 65).

Furthermore, interpretation and implementation of article 12 in regard to health care varies across cantons and municipalities. In this context, several cantons for example, have established

³² Federal Social Insurance Office (2002) ‘Versicherungspflicht der Sans-papiers’, Order to the KVG Insurance Companies from 19th December 2002. FSIO: Bern. Available at: http://www.sg.ch/home/gesundheit/formulare_merkblaetter/krankenversicherung.Par.0006.DownloadListPar.001.3.FileRef.tmp/SansPapiers_Kreisschreiben_Bund.pdf (11 October 2010)

³³ Federal Social Insurance Office/ Federal Office of Public Health (2002) ‘Sans-papiers: Krankenversicherung und Zugang zur Gesundheitsversorgung’, Communication from 23rd December 2002 to the cantonal governments. FSIO/FOPH: Bern.

³⁴ Eidgenössisches Versicherungsgericht, Sozialversicherungsabteilung des Bundesgerichts, Prozess {T 7}K 34/04, Urteil vom 2. August 2005, <http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm> (30.5.2009)

³⁵ Motion by Alexander Kuprecht: ‘Aufhebung der KVG-Grundversicherungspflicht für Sans-Papiers’ of 18.3.2010. Available at: http://www.parlament.ch/D/Suche/Seiten/geschaeft.aspx?gesch_id=20103203 (October 2010).

³⁶ See Decision by the Federal Tribunal, Reference No. 2P 318/2004, of 18 March 2005.

³⁷ Interview with expert at the FOPH, 1.4.2011.

the right to 'necessary' health care in their cantonal constitutions (Miccoli 2006, 34).³⁸ In December 2001 the Advisory Board of Medical Ethics of the University Hospital of Geneva recommended that also undocumented migrants should be entitled to receive 'basic' medical care, in emergency and non-emergency cases irrespective their insurance status. Based on this recommendation, in Geneva all patients have the right to all 'vital' care and to all health care necessary to protect public health and to lead a life in human dignity.³⁹

Summarizing, every person resident in Switzerland, irrespective of residence and insurance status, has the right to 'basic' health care. The cantons and municipalities are free to regulate this condition in their respective legislation, as long as they keep the minimum threshold as defined in article 12 of the Swiss Federal Constitution. Finally, health professionals have to decide on a case-by-case basis on the adequate treatment provided to a patient in need.

Costs for Care

Costs for Care in the Mainstream System

Regarding coverage of cost for undocumented migrants who take out basic health insurance, the same rules apply as for any insured persons.

Every person registered with obligatory health insurance has to cover:

- A monthly per capita insurance premium, which can vary significantly depending on the canton of residence and service. In 2009 the average premium ranged between 230 CHF in the canton Nidwalden and 420 CHF in the canton Basel-city.⁴⁰ For children up to the age of 18 premiums ranged between 56 CHF in Nidwalden and 101 CHF in Basel.
- An annual excess (*Jahresfranchise*) in the amount of 300 CHF per adult person. The insured person may choose a higher excess rate, ranging between 500 and 2,500 CHF, in order to reduce the monthly premiums. Minors are exempted from obligatory excess payments (but parents may opt for an excess in order to reduce monthly premiums). Once an insured patient's chosen annual excess has been consumed, the health insurer starts to pay all subsequent health care bills for the client.
- In addition to the annual excess, the client provides a 'patient's contribution' of 10% of care costs up to an annual maximum sum of 700 CHF for adults and 350 CHF for children and teenagers (see FOPH 2009). There is no patient contribution for costs related to pregnancy and birth.⁴¹

The cost monitoring of the Federal Office of Public Health shows, that the average total monthly costs for basic health insurance between January and July 2010 amounted to 272 CHF (gross) per person.⁴²

According to the health insurance law⁴³ persons living in a 'modest economic situation' may be granted a reduction of the monthly premiums. This regulation also applies to everyone, included to undocumented migrants.

³⁸ E.g. Appenzell Ausserrhoden, Berne, Neuchâtel, Tessin.

³⁹ Conseil d'Ethique Clinique, recommendations concerning 'Prise en charge clinique de patients requérants d'asile frappés d'une décision de Non Entrée en Matière (NEM), et attribués à un autre canton que Genève', Geneva on 15 October 2007.

⁴⁰ Kantonale Durchschnittsprämien 2009/2010 der oblig. Krankenpflegeversicherung (mit Unfall), Bundesamt für Gesundheit, Bern. Last update: September 2009; available at: http://www.bag.admin.ch/themen/krankenversicherung/00261/index.html?lang=de/webgrab_path=http://www.praemien.admin.ch/2010/index.php (23.11.2009).

⁴¹ See also 'Informationen zur Krankenversicherung für Sans-Papiers in der Schweiz', available at: http://www.redcross.ch/data/dossier/24/redcross_dossier_24_28_de.pdf (February 2010).

⁴² Monitoring der Krankenversicherungs-Kostenentwicklung (II. Quartal 2010), available at: http://www.bag.admin.ch/kmt/index.html?webgrab_path=aHR0cDovL3d3dy5iYWctYW53LmFkbWluLmNol2t1di9rb3N0ZW5tb25pdG9yaW5nX2xpdmUva21fZGUucGhwP21vZD0wJmlkMT0wJmxbmc9ZGUmbmF2PWdyOSZtYXA9YWJz&lang=de (11.10.2010).

In order to ensure access to healthcare, cantons can indeed grant subsidies to persons on low incomes which may amount to 100% for people living in social exclusion (Médécins Du Monde 2009, 36). In many cantons however, the reduction only covers a (small) part of the premium for adults.⁴⁴

Furthermore, the conditions on which reduced monthly premiums are granted to persons in need vary across cantons.⁴⁵ Some cantons, such as Geneva and Neuchatel, require applicants to produce an income and tax statement on the basis of which the neediness is evaluated (see also Achermann 2003, 10). Consequently, in some cantons persons who do not pay taxes do not have access to reduced monthly premiums and may thus not be able to take out basic health insurance at all. However, a systematic analysis of the conditions on which premium reductions are granted to undocumented migrants is still missing.

Costs for Care outside the Mainstream System

Persons not covered by health insurance have to bear the full costs of the treatment, with the exception of emergency care. According to a study on health care provided to undocumented migrants in Switzerland published in 2006 this may involve between 50 and 100 CHF per consultation with a general practitioner (Achermann/Chiementi 2006, 150). Furthermore the authors report that undocumented migrants were asked to pay a deposit between 4,000 CHF and 20,000 CHF in the event of giving birth⁴⁶ (Achermann/Chiementi 2006, 152). Based on consultancy work with sex workers, the *Aids-Hilfe Schweiz* reports that persons without insurance have to pay a deposit of approximately 500 CHF if they need hospitalization (Aids-Hilfe Schweiz 2009, 6). Following this information, medical treatment beyond emergency treatment most likely is unaffordable for the majority of undocumented migrants who are not insured.

Despite the cantonal responsibility for guaranteeing basic health care to all persons resident on the canton's territory, there is no uniform procedure for covering treatment costs for undocumented migrants without health insurance, but practices vary between health providers and cantons.⁴⁷

Generally, costs for treatment for undocumented migrants may be covered by:

- the insurance company, if health insurance was taken out (also for treatment that dates back up to three months);
- the employer's accident insurance, if the patient had an accident at or outside the workplace
- the canton or the municipality from their solidarity and social funds;
- the health providing organisation (some hospitals have installed a specific fund for the purpose of covering the treatment costs for non-insured persons).
- the patients themselves. In this case payment may be effected in special payment arrangements to be negotiated with the health provider, or with the help of non-governmental organisations (Achermann/Efionayi-Mäder 2003, 80; Nationale Plattform Gesundheitsversorgung für Sans-Papiers).

⁴³ article 65 (1) KVG

⁴⁴ The premium reduction for minors covers the whole premium.

⁴⁵ www.gdk-cds.ch

⁴⁶ This shows also that giving birth may not necessarily be dealt with under the framework of „emergency care“

⁴⁷ See Request No. 09.3484 from Bea Heim to the Swiss Federal Council from 28.5.2009 'Postulat: Sans-Papiers. Krankenversicherung und Zugang zur Gesundheitsversorgung'. Available at: http://www.parlament.ch/D/Suche/Seiten/geschaefte.aspx?gesch_id=20093484 (11.10.2010)

Specific Entitlements

Undocumented Children: Health in school

Undocumented children are subject to the same restrictions as undocumented adults. However, school children have access to some health care services through the school system. As the first nine years of education are mandatory for all children living in Switzerland, this is also compulsory for undocumented children. School doctors and paediatricians indeed perform basic medical and preventive check-ups, provide free of charge vaccination as well dental screening in all schools. Any other treatment outside of school has to be organized by the parents (Médecins du Monde 2009, 37). Nevertheless, like other Swiss institutions also the school system is federalised, and thus differences in the implementation of school children's rights can be observed. In Geneva, for instance, school children are required to take out health insurance by cantonal law. In this context, the cantonal authorities in cooperation with child-care organisations cover basic health insurance for children in need (Achermann 2003, 9).⁴⁸ In 2002, 1,522 children without legal residency were registered at the cantonal insurance authority in the health insurance system (Achermann 2003, 9).

Regional and Local Variations

Outline laws issued by the Federal Government are executed by the 26 cantons (FOM 2009b, 24). Thus, as has become apparent throughout this report, the implementation of the respective laws greatly varies across the cantons which results in strong regional and local variations as regards access to health care for undocumented migrants (e.g. costs for health insurance, general cantonal approach towards UDM). Some cantons are known to follow a more liberal approach as regards matters of immigration and social welfare, while others are more restrictive. This is also reflected by the regulations and implementations of state emergency aid, as well as the monitoring of the insurance obligation by the cantons. However, very little is still known on respective cantonal practices in detail.

Obstacles to Implementation

Cantonal practices

Conflicting interests of immigration law enforcement and public health care principles may be best illustrated in the area of emergency aid (*Nothilfe*). Persons whose asylum application was rejected or not admitted (NEE) are entitled to receive emergency aid (*Nothilfe*) until they have left the country.⁴⁹ Under the responsibility of the cantonal administrations emergency aid and the respective services covered (e.g. food, shelter, health care) are regulated differently in each of the 26 cantons. The health service costs for persons receiving emergency aid are to be covered by the cantonal authorities (see Efiionayi-Mäder et al. 2010, 66). Following legal amendments in 2004 and 2008 which restricted basic support for unsuccessful asylum seekers to emergency aid (formerly access to social assistance benefits and automatic basic health insurance coverage), several cantons started deregistering this group of persons from basic health insurance while other cantons continued covering health insurance at least for particular groups, such as persons whose return cannot be enforced, persons with serious illnesses resulting in extraordinary high treatment costs, or for specific risk groups (e.g. long-term recipients of emergency aid, persons with chronic diseases, families with children) (see [Appendix](#); Achermann 2009; Trummer 2008).⁵⁰ In cantons where this group of persons is not

⁴⁸ Achermann, C. (2003). 'Krankenversicherung für Sans-Papiers: Die aktuelle Situation in Recht und Praxis.' *Asyl* 3/03: 8-11.

⁴⁹ According to the Federal Office for Migration in 2008 a total of 4,308 persons received a negative asylum decision or their application was found to be inadmissible. Out of this group, 56% had applied for emergency aid thereafter (FOM 2009c, 3)

⁵⁰ Gautier, Dinu (2008). Asyl und Gesundheit. Illegale dürfen erblinden. *WOZ*. Ressort Schweiz. 06.03.2008

(automatically) covered with health insurance anymore recipients of emergency aid may request medical treatment at the competent authority: either the social service office or the immigration authority, which decide whether the requested treatment needs to be provided or not. Empirical evidence shows that access to the necessary treatment in these cases is not always guaranteed because the responsible civil servants usually lack the necessary medical expertise in order to assess the urgency of a treatment (Achermann 2009).

This practice contradicts the obligation of cantons to ensure basic health insurance coverage of the entire population present on their territory. Moreover, according to the FOPH limiting medical assistance to emergency care for some categories of persons goes against the constitutionally guaranteed right to equal treatment (article 8 Federal Constitution) and to basic health care (article 12 Federal Constitution).

Practices of insurers

Still little is known about the compliance of insurance companies with their obligation to accept undocumented migrants. In this regard, following a request to the Swiss Federal Council on the insurance situation and access to health care of undocumented migrants,⁵¹ the Federal Office for Public Health commissioned a study to analyse the practices of insurance companies towards undocumented migrants, which is expected to be finalised in the course of 2011.

Obligation to Report

Health personnel (in hospitals and ambulatory services) are bound to professional secrecy. As regulated in article 321 Swiss Criminal Code, they are not allowed to report any personal information including the residence status of a patient to any third party (Davet 2008). According to Article 84ff KVG also insurance companies are not allowed to pass on any data on the residence status of their clients.

Responding to complaints about non-compliance of the insurers, the Federal Insurance Office in December 2002 ordered the insurance companies that no personal data of undocumented clients is to be processed to third parties.

Providers and Actors

Generally, in Switzerland three main categories of health providers for undocumented migrants can be distinguished:

- 1) Services which are integrated into public hospitals,
- 2) Low-threshold medical or social drop-in centres run by non-profit or non-governmental organizations, and
- 3) Publicly (co-)financed services offering specialised care on specific health topics and targeting specific risk groups.

Civil society actors are certainly important actors promoting health care access for undocumented migrants. Some cantons have established cooperation with NGOs or established specific dedicated services that facilitate access of undocumented migrants to health care. These services are unequally distributed between the cantons, but also within a canton (e.g. between city and countryside). A detailed description of the providers and actors involved in providing health care for undocumented migrants in Switzerland is available in the country report 'Undocumented Migrants: their needs and strategies for accessing health care in Switzerland'

⁵¹ Response to a Request No. 09.3484 from Bea Heim to the Swiss Federal Council of 2.9.2009 'Postulat: Sans-Papiers. Krankenversicherung und Zugang zur Gesundheitsversorgung'. Available at: http://www.parlament.ch/D/Suche/Seiten/geschaefte.aspx?gesch_id=20093484 (11.10.2010)

(Wyssmüller/Efionayi-Mäder 2011), as well as in the practices database of the NowHereLand project.⁵²

Conclusions

The right to health care for every person living in Switzerland is protected by federal legislation defining the obligation and the right to take out basic health insurance. Apart from this, also persons without basic health insurance coverage have the right to 'basic' health care by virtue of article 12 of the Constitution of the Swiss Federation. Moreover, several policy documents issued by the federal government and directed towards the cantonal administrations and insurance companies specifically deal with access to basic health insurance for undocumented migrants. Thus, undocumented migrants have the right to healthcare through basic health insurance. However, in practice access of undocumented migrants to health insurance proves to be highly complex and remains a matter to investigate. One of the main obstacles to realise the right to basic health insurance can be identified in the financing of insurance premiums and treatment contributions. Although persons in a 'modest economic situation' have a right to apply for reduced insurance premiums, complex administrative procedures and requirements can easily result in difficulties in effectively implementing the given regulation. Moreover, the large autonomy of the cantons in monitoring the health insurance obligation, as well as in regulating matters of minimum social and health care support, result in cantonal variations as regards health care coverage for undocumented migrants. Furthermore, only little is known on the actual practices of insurance companies to accept undocumented migrants. Although undocumented migrants in Switzerland are granted a right to health care to the same conditions as Swiss nationals, undocumented migrants face considerable difficulties to realise this right, depending on their economic situation, their place of residence, as well as their administrative status.

⁵² http://www.nowhereland.info/?i_ca_id=416 (20.12.2010).

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Appendix

Appendix 1 Health Insurance (HI) coverage for recipients of emergency aid in the 26 Swiss cantons

Name of canton	Competent authority for emergency aid	HI for all recipient of emergency aid	HI for specific groups
AG	Cantonal social service	Yes	Recipients must be officially registered in a municipality
AR	Migration department	No	Rejected asylum seekers
AI	Department for Aliens Affairs	No	HI only for constant recipients of emergency aid
BL	Cantonal social services	Yes	
BS	Cantonal social service	No	HI only if treatment costs exceed CHF 1,000
BE	Migration department	No	HI only for persons residing in a municipality
FR	Cantonal social service	Yes	HI for persons resident more than 3 months
GE	Cantonal population office/asylum department	No	HI only for rejected asylum seekers; not for persons with NEE
GL	Cantonal social service	Yes	
GR	Aliens police	No	
JU	Aliens police	No	
LU	Cantonal social service	Yes	
NE	Migration department	Yes ¹	
NW	Asylum department	Yes	
OW	Migration department	Yes	
SG	Municipalities	No	Regulations depend on municipality
SH	Cantonal social service	No	
SZ	Aliens police	No	HI only for constant recipients of emergency aid
SO	Department for social security and asylum	No	
TG	Migration department	No	HI only in exceptional cases
TI	Cantonal social service	No	HI for families with children
UR	Municipalities	Yes	
VS	Population and migration office	No	
VD	Aliens police	Yes ²	
ZG	Migration department	Yes	
ZH	Migration department	No	

Source: Trummer 2008, Bolliger/Féraud 2010

Notes: The *Schweizer Flüchtlingshilfe* is going to publish an update to the 2008 report by Muriel Trummer, which was not publicly available by the time of writing this report. However, according to a draft version which was provided to the authors of this study, the report does not contain any changes with regard to the data presented in the table.

¹ Regarding Neuchâtel the two sources referred to in this table show contradictory information. While Trummer (2008) refers to the response to a survey in which the cantonal authority confirmed that recipients of emergency aid are covered by health insurance, Bolliger and Féraud (2010) state that undocumented migrants are only partially registered with basic health insurance in the canton of Neuchâtel.

² Regarding Vaud the two sources referred to in this table show contradictory information. While Trummer (2008) refers to the response to a survey in which the cantonal authority confirmed that recipients of emergency aid are NOT covered by health insurance, Bolliger and Féraud (2010, 30) state that this group of persons is registered with basic health insurance.