



### PILLAR III HUMAN RIGHTS

#### *Access of Health Care of Undocumented Migrants in Switzerland*

*By Xhesika Serjani*

#### **Abstract**

This paper deals with access of health care of undocumented migrants in Switzerland. Firstly it provides a general overview of the health care system of Switzerland and exposes the main Swiss laws and regulations which regulate access of health care. In addition, this paper exposes the most important categories of health care providers and the cooperation of NGO-s which facilitate access to health care, as well as the issue of financing in the case of undocumented migrants. Moreover, it presents two studies related to the issue of access of healthcare. The first study regards the case of pregnant women and the second studies the most frequent health problems of undocumented migrants. Furthermore, the paper also exposes the issue of access of health care of the children of undocumented migrants.

**Keywords:** access to healthcare, undocumented migrants, categories of health care providers.

#### **Introduction**

The last consecutive decades, migration has become a global issue arising major health challenges, especially regarding access to health care services in the destination country of undocumented migrants. By definition undocumented migrants are persons who live or stay in a country without having a valid residency permit. As a result of such lack of the legal entitlement, they have been defined as physically present and formally excluded. Since their movements from one country to another are rarely tracked by the authoritative bodies and no census reaches them, their names do not figure in the official state registers<sup>1</sup>.

Even though Swiss legislation provides access to healthcare for everyone residing in Switzerland for more than three months, in practice undocumented migrants face many difficulties in this regard. Therefore, is raised the question; how are their rights of health regulated and how is provided the

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<sup>1</sup> Eight Stories from Switzerland. (2018). In M. Jossen, Undocumented Migrants and Healthcare (p. 19). Open Book Publishers. Retrieved from <https://www.jstor.org/stable/j.ctv4w3srn.5>



access of health care to them? This problem is strongly connected with the main question of the research paper. Initially, the paper represents some statistics about the origin of the undocumented migrants in Switzerland as well as for their education. Then, it investigates the changes of the structures for financing and health care which after the 1996 were set on the cantonal level, emphasizing their great influence. Concretely, Switzerland has a population of 7.7 million inhabitants<sup>2</sup> and hosts from 50 000 undocumented migrants to 100 000, whom result in approximately 0.6 to 1.2% of the resident population<sup>3</sup>. It is a confederation and consists of 20 cantons, six half cantons<sup>45</sup> and 2 740 municipalities which compromise four main officially linguistic groups. In this fourth are included the French, German, Italian and Rhaeto-Romanic group<sup>6</sup>. This paper, also addresses basic regulations of the registration of asylum seekers, regarding the statutory basic health insurance and the procedure of entering in a contract of insurance.

Moreover, it deals with the laws and regulations of the Swiss legislation in the sphere of access of health care. Some of the main sources are; the Federal Constitution of the Swiss Confederation, the Swiss Civil Code and the Swiss Criminal law.

The paper consists of three sections. The first section studies access of health care of undocumented migrants in Switzerland. The second section deals with the relevant laws and regulations of health care regarding undocumented migrants and the insurance package. While the third section focuses on the categories of health care providers and health care of children of undocumented migrants.

## Health System of Switzerland

According to statistics, approximately 43% of undocumented migrants of Switzerland originate from South America, while 24% from Europe, 11% from Asia and 19% from Africa. Regarding age, the major part is between 18 and 40 years old. While, regarding education 59% have received

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<sup>2</sup> Veronika Bilger, Christina Hollomey. (2018). Policies on Health Care for Undocumented Migrants in Switzerland. Federal Office at Public Health.

<sup>3</sup> Yves Jackson, A. P. (2018, July 27). Health of undocumented migrants in primary care in Switzerland. (S. Rohrmann, Ed.) US National Library of Medicine National Institutes of Health. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6063438/>

<sup>4</sup> In the 1848 Switzerland switched to the current federal structure and therefore each of the cantons has its own legislation and government. Switzerland has 20 cantons and six half cantons. The difference between them is that normal cantons get two seats in the Council of States, while the half cantons get only one. The cantons are; the Canton of Zurich, of Berne, of Lucerne, of Uri, of Schwyz, of Obwalden, of Nidwalden, of Glarus, of Zug, of Fribourg, of Solothurn, of Basel- Stadt, of Basel- Landschaft, of Schaffhausen, of Appenzell- Ausserrhoden, of Appenzell- Innerrhoden, of St. Gallen, of Graubunden, of Aargau, of Thurgau, of Ticino, of Vaud, of Valais, of Neuchatel, of Geneva and of Jura.

<sup>5</sup> Rashiti, V. (n.d.). Study in Switzerland. Retrieved from Cantons of Switzerland: <https://studyinginswitzerland.com/cantons-of-switzerland/>

<sup>6</sup> Chantal Wyssmüller, Denise Efonayi-Mäder. (2011). Undocumented Migrants: their needs and strategies for accessing health care in Switzerland Country Report on People & Practices. Switzerland Switzerland S: Federal Office of Public Health.



secondary or higher education. The remaining part, have received basic education, which consists of six to nine years of primary school<sup>7</sup>. When it comes to healthcare, Switzerland has a very high out of pocket contribution rate. However, in the case of undocumented migrants the Swiss policies ignore this fact. The principle of federalism is not applied only in the political system but also to the health care system which is decentralized and involves many actors<sup>8</sup>. In the 1996, were made important changes regarding the statutory health insurance. Since the federal government increased its regulatory powers over the health system, the structures for financing and health care changed and were set on the cantonal level. Due to the fact that Switzerland has a federal tradition, the power of regulating healthcare belongs to its cantons<sup>9</sup>. Each of the cantons has responsibility regarding the implementation of federal laws, regulations and provisions of health care, prevention of diseases and health education. Nonetheless, specific parts of such responsibility might be delegated to the municipalities, for instance the support of elderly persons or pregnant women. Hence, cantonal policies have a great influence in the extent to which persons can access health care at their place of residence.

Following the statutory changes which have been effective since 1996, nowadays if not being covered by a health insurance in another country of the European Union (EU) or of the European Free Trade Association (EFTA)<sup>10</sup> or of a country with which Switzerland has concluded bilateral social security agreements<sup>11</sup>, all the persons residing in Switzerland have the right and the duty to take out basic health insurance<sup>1213</sup>. The registration of Asylum seekers is made through basic health insurance during their asylum procedure. This universal scheme of health insurance is mandatory for all the persons who exceed three months of residing in Switzerland therefore it includes also the undocumented migrants. The statutory basic health insurance is offered by health insurance funds and private insurance companies which are in accordance with the requirements of the law of health insurance. The registered insurance companies which offer basic coverage shall be nonprofit and are monitored by the Federal Office of Public Health. The insurers are obliged to accept all applicants for the basic package of benefits, since the residents enjoy free choice among them. On the other hand, the individual insurance contributions depend on age group and regional level.

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<sup>7</sup> Eight Stories from Switzerland. (2018). In M. Jossen, *Undocumented Migrants and Healthcare* (p. 19). Open Book Publishers. Retrieved from <https://www.jstor.org/stable/j.ctv4w3srn.5>

<sup>8</sup> Veronika Bilger, Christina Hollomey. (2018). *Policies on Health Care for Undocumented Migrants in Switzerland*. Federal Office at Public Health.

<sup>9</sup> Eight Stories from Switzerland. (2018). In M. Jossen, *Undocumented Migrants and Healthcare* (p. 19). Open Book Publishers. Retrieved from <https://www.jstor.org/stable/j.ctv4w3srn.5>

<sup>10</sup> RO and the BU are excluded.

<sup>11</sup> The countries with which Switzerland has concluded bilateral social security agreements are; Australia, Brazil, Canada, Chile, China, Federal Republic of Yugoslavia, India, Israel, Japan, Kosovo, North Macedonia, Montenegro, Serbia, Philippines, San Mario, Turkey, United States and Uruguay.

<sup>12</sup>The definition of Basic Health Insurance cover is defined in the Health Insurance Act and is the same also regarding the health insurer.

<sup>13</sup> Veronika Bilger, Christina Hollomey. (2018). *Policies on Health Care for Undocumented Migrants in Switzerland*. Federal Office at Public Health.



### Relevant Laws of Health Care for Undocumented Migrants and Insurance Package

According to the Federal Constitution of the Swiss Confederation, every person who resides in Switzerland is granted access to basic health care<sup>14</sup>. Furthermore, any person in distress has the right to assistance if being in need<sup>15</sup> conditions. This right is entitled to every person regardless their residence or insurance status and it cannot be restricted. Referring to the current policy interpretations and the Swiss Civil Code, since undocumented migrants reside in Switzerland consequently they enjoy the right and have the duty to take out insurance<sup>16</sup>. If the residents, including the undocumented migrants do not take out insurance it might result in sanctions. Furthermore, when a contract is agreed, the uninsured person might be obliged to pay a supplementary penalty fee if having delayed to take out insurance exceeding three months after his/her arrival in Switzerland<sup>17</sup>. In addition, the federal state as well as the cantons are obliged to ensure access to healthcare to everybody if they require it. The healthcare providers have as moral duty to assistance to every person in distress. If any of them refuses to offer assistance in emergency cases he/she has criminal liability under Swiss Criminal Law.

In the case of documented residents receiving health care during the time while their insurance is not approved, their costs get covered in the moment the contract is signed. The term of the contract is fixed by the insurance retrospectively as soon as the person registers it at a municipality. Whereas, in the case of undocumented migrants it cannot be known if the person intends to stay or not in the country. Therefore, the insurance provider has to take in consideration the risk of signing contracts with individuals who might have entered the country only to get medical treatment. Being in such situation, the insurance company has options to refuse the signing of the contract or to rescind it at the moment in which the individual leaves the country. Regarding the residence status of the person residing in Switzerland the Public Health Insurance Law makes no distinction. Under this law, every

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<sup>14</sup> Article 41 (1) of the Federal Constitution of Swiss Confederation states: "The Confederation and the Cantons shall strive to ensure that, in addition to personal responsibility and private initiative:

a. every person shall benefit from social security

b. every person shall benefit from necessary health care...

<sup>15</sup> Article 12 of the Federal Constitution of Swiss Confederation states: "Persons in distress and incapable of looking after themselves have the right to be helped and assisted, and to receive the means that are indispensable for leading life in human dignity".

<sup>16</sup> Article 23 of the Swiss Civil Code states: "A person's domicile is the place in which he or she resides with the intention of settling; residence for the purpose of education or the accommodation of a person in an educative institution or care home, a hospital or a penal institution does not by itself establish domicile".

Article 24 of the Swiss Civil Code states: "A person retains his or her domicile until such time as a new one is acquired. A person's domicile is deemed to be the place in which he or she is temporarily resident if no previously established domicile may be proven or if he or she was formerly resident abroad and has not yet established a domicile in Switzerland".

Article 25 (1) of the Swiss Civil Code states: "The domicile of a child subject to parental responsibility is deemed to be that of the parents or, if the parents have different domiciles, that of the parent with whom the child is resident; in all other cases it is deemed to be the child's temporary domicile".

Article 26 of the Swiss Civil Code states: "Adults subject to a general deputyship are domiciled at the location of the adult protection authority".

<sup>17</sup> Eight Stories from Switzerland. (2018). In M. Jossen, *Undocumented Migrants and Healthcare* (p. 19). Open Book Publishers. Retrieved from <https://www.jstor.org/stable/j.ctv4w3srn.5>



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company which offers compulsory health insurance is obliged to accept all the applications for the basic package of benefits, despite the individual risk related to the status of residence, gender or solvency. Moreover, according to the Swiss accident insurance Law, every person who is gainfully employed in Switzerland, shall be insured by his/ her employers contra risk of accident or any occupational disease. Such obligation is applied in every employment relationship even to the case of undocumented migrants. In order to be registered in an insurance company to benefit from the basic health insurance, applicants have to follow the standard procedure. They have to provide some personal data such as; their full name, the date of birth, an address and a post or bank account. In case that the residence of the applicant is not registered in a formal way, as the place of residence is considered the actual domicile.

Furthermore, even if they pay the first premiums and suddenly are in insolvency, the delay in premium payments might lead to a cost-recovery process which might result in being reported to the authoritative bodies. Also, the nonpayment of health insurance suspends the reimbursement of the costs of treatments, whether current or subsequent. Generally, the insured pays a monthly premium to the insurance company, which amount depends on the service and canton. He/ She pays an excess between 200 and 1 700 euros and also 10% of the medical and treatment charges. The poor people mostly choose policies with higher excess. Such choice may lead to enormous problems and to them might not be provided health care when being ill, since they cannot afford to pay the costs incurred. In order to help them in accessing healthcare, the cantons might grant subsidies to people who have low incomes<sup>18</sup>. Nonetheless, in order to have insurance is necessary to have an enough paid work.

Regrettably the major part of undocumented migrants is employed on the black market, earns low and irregular incomes, thus they live in precarious conditions. Due to the financial pressures that derive as a consequence of the high cost of health care they are pushed into works which risk their health. Since they do not enjoy employment protection, they are not able to negotiate for wages, protection if being accidented, sickness or in case of pregnancy. For such reason, they end up either being used by their employers or rely on charity. Even that they are allowed by the federal health policies to purchase private life insurance, only a few part of them is able to access medical care, since the costs of insurance are very high. Regardless the steps undertaken by the patients and the health care providers in the health care system, the limitations of inclusion of undocumented migrants cannot be avoided. In case a patient is uninsured, his/ her treatment is strictly limited. However, even in the case when a migrant has insurance, it is not the same compared to that of Swiss citizens, since it is needed advocacy. Moreover, in order to achieve inclusion in most of the cases patients are forced to accept more health risks than the Swiss citizens. Being undocumented is a social determinant of health on its own. Unfortunately, the lack of documentation is not resolved

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<sup>18</sup> Pierre Chauvin, Isabelle Parizot, Nathalie Simonnot. (n.d.). Access to healthcare for undocumented migrants in 11 European countries. Retrieved september 27, 2009, from <https://www.hal.inserm.fr/inserm-00419971>



in most cases, despite all the efforts made by healthcare providers and patients. In cases when it is resolved, the solution is accomplished after many years of facing difficulties and suffering.

### The Categories of Health Care Providers

In general, in Switzerland are distinguished three categories of health providers regarding undocumented migrants. The first category refers to services that are integrated in public hospitals. The second includes the medical or social centers, which are administrated by nonprofit or non-governmental organizations. While, the third category consists of publicly (co-) financed services which offer specialized care on specific topics of health<sup>19</sup> The health care access for undocumented migrants is promoted by civil society actors. In order to facilitate the access of health care of undocumented migrants some cantons have cooperated with NGOs. These services are distributed in an unequal manner whether within or between the cantons, because of the large autonomy of the cantons regarding the monitoring of health insurance and the regulation of the matters of minimum health care support. The fact that the policies which grant access to healthcare vary from canton to canton complicates the issue. Until 2012, it was not clear if the cantons had to grant insurance to the undocumented migrants. Some cantons such as Vaud and Geneva allow the provision of health services for vulnerable persons, including undocumented migrants. Both have implemented primary care services<sup>20</sup> regarding public healthcare.<sup>21</sup>

The financing and function of health care services is granted by the canton itself via service providers, administrations and NGOs. Whereas, the majority of other cantons have not adopted such policies. They either chose to delegate this task to NGO-s or do not offer any service, excluding the emergency department of public hospitals. Therefore, undocumented migrants are protected less than other groups of the population..

As aforementioned, in theory Switzerland applies mandatory health insurance, therefore undocumented migrants are entitled to the insurance package, which includes the basic set of benefits that is offered to all the persons residing in Switzerland. The basic set of benefits covers primary and secondary care, such as reproductive care, out and inpatient medical treatment, care in case of pregnancy and birth and treatment if being accidented and prescribed medications. While

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<sup>19</sup> Chantal Wyssmüller, Denise Efionayi-Mäder. (2011). Undocumented Migrants: their needs and strategies for accessing health care in Switzerland Country Report on People & Practices. Switzerland Switzerland S: Federal Office of Public Health.

<sup>20</sup> The primary care services include health promotion, prevention of the disease, maintenance of health, education of patient, counseling, treatment of chronic diseases etc.

<sup>21</sup> Eight Stories from Switzerland. (2018). In M. Jossen, Undocumented Migrants and Healthcare (p. 19). Open Book Publishers. Retrieved from <https://www.jstor.org/stable/j.ctv4w3srn.5>



the dental care is not covered<sup>22</sup>. According to a study made to distinguish the most frequent health problems of undocumented migrants, results that most of them suffer from chronic cumulative health problems<sup>23</sup>. This emphasizes the need for specific care from health care professionals and attention from policy-makers, in order to ensure the access to primary healthcare services<sup>24</sup>. The premiums for set of benefits differ regionally and depend on the insurance policy of the individual. But, in practice evidences show that health insurance is highly complex and not accessed to all the undocumented migrants. Since they have low wages, they cannot afford to pay the insurance premiums.

## Conclusion

This paper examines the access to health care of undocumented migrants in Switzerland. It provides a better understanding of how the access to health care is granted to migrants who do not have the legal entitlement of residing. This paper provides the most important laws of the Swiss Confederation regarding such matter. According to the Swiss legislation, access to basic health care is granted to every person residing in Switzerland for more than three months<sup>25</sup>. But however, even that law does not include the undocumented migrants, in practice they face many difficulties in realizing such right, since its realization depends on the economic situation, administrative status and on the place of residence. Furthermore, if being residents for more than 3 months, the undocumented migrants enjoy the right and the duty to take insurance<sup>26</sup>.

Other discussed issues are the insurance registration and the required premiums payments. Due to the large autonomy of the cantons, regarding the monitoring of health insurance and regulation of health care support, there are many cantonal variations. Regarding categories of Health care providers, they are divided in three sections. The first category includes services of public hospitals, the second medical or social centers, while the third includes publicly (co) financed services<sup>27</sup>. While, regarding the financing of health care services, in majority it granted the canton itself through

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<sup>22</sup> Veronika Bilger, Christina Hollomey. (2018). Policies on Health Care for Undocumented Migrants in Switzerland. Federal Office at Public Health.

<sup>23</sup> Chronic cumulative health problems include hypertension, high cholesterol, diabetes, arthritis, ischemic heart disease, chronic kidney disease, heart failure, depression, chronic obstructive pulmonary disease etc.

<sup>24</sup> Yves Jackson, A. P. (2018, July 27). Health of undocumented migrants in primary care in Switzerland. (S. Rohrmann, Ed.) US National Library of Medicine National Institutes of Health. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6063438/>

<sup>25</sup> Article 41 of the Federal Constitution of Swiss Confederation: "The Confederation and the Cantons shall strive to ensure that, in addition to personal responsibility and private initiative:

a. every person shall benefit from social security  
b. every person shall benefit from necessary health care

<sup>26</sup> Article 23- 26 of the Swiss Civil Code

<sup>27</sup> Chantal Wyssmüller, Denise Efnayyi-Mäder. (2011). Undocumented Migrants: their needs and strategies for accessing health care in Switzerland Country Report on People & Practices. Switzerland Switzerland S: Federal Office of Public Health.



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service providers, administrations and NGOs. Whereas, the remaining cantons have not adopted such policies and chose to delegate this task to NGO-s or do not offer any service. As a consequence, undocumented migrants are protected less than other groups of the population. In the following, the results of the two represented studies show that there is lack of access of health care in case of undocumented migrants<sup>28</sup>.

In conclusion, this research paper examines the law and regulations of access to healthcare of undocumented migrants in Switzerland, the health insurance and the categories of healthcare providers. After reviewing the aforementioned issues, the paper is concluded by providing two studies which show the implementation of the right to access to health care and which emphasize the lack of healthcare services in the case of undocumented migrants. The practice shows that the issue of access of health care is highly complex and remains a matter which shall be investigated further.

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<sup>28</sup> Yves Jackson, A. P. (2018, July 27). Health of undocumented migrants in primary care in Switzerland. (S. Rohrmann, Ed.) US National Library of Medicine National Institutes of Health. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6063438/>; Wolff H1, Epiney M, Lourenco AP, Costanza MC, Delieutraz-Marchand J, Andreoli N, Dubuisson JB, Gaspoz JM, Irion O. (2008, March 19). Undocumented migrants lack access to pregnancy care and prevention. Online.