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PERSPECTIVE

Who Deserves Health Care in a Global Pandemic?

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Abstract

The COVID-19 pandemic provides an opportunity for reflection on universal health coverage. We look at the case of the province of Ontario, Canada, which expanded health care entitlement during the pandemic to people not normally eligible for coverage, regardless of their citizenship or immigration status. We use the concept of health-related deservingness to examine why certain groups of people are deemed undeserving and are excluded in ordinary times but included in extraordinary times. We argue that tying health-related deservingness to citizenship or immigration status creates problematic inequities in health care access and outcomes and that entitlement to health care should be based instead on a person's right to health. A right to health approach could make health care systems truly universal and comprehensive. We recommend that expanded entitlement to care should be sustained, both in Ontario and elsewhere, beyond the COVID-19 crisis.

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Introduction

On March 21, 2020, ten days after the World Health Organization declared the COVID-19 outbreak to be a global pandemic, the Ontario Ministry of Health took action to expand health care entitlement to all people living in Ontario, Canada, with or without publicly funded health coverage (nationally known as medicare). This was done to reduce the spread of COVID-19 by addressing financial barriers to care for uninsured residents during the pandemic.[1] Ordinarily, only certain categories of residents are eligible for medicare to cover the cost of a range of health services. The Canada Health Act, which states that the aim of Canadian health policy is to protect the health of residents of Canada, ties medicare entitlement to immigration status and to place of residence. It defines a "resident" as a person who is "lawfully entitled to be or to remain in Canada," who makes their home here, and who is not a tourist or visitor. For the purposes of medicare eligibility, minimum residency requirements are set by each of the provinces and territories, which are responsible for administering and operating their own health insurance plans.[2]

In Ontario, the Health Insurance Act lays out specific eligibility requirements for the Ontario Health Insurance Plan (OHIP). These requirements exclude some residents (for example, new permanent and temporary residents in their first three months, international students, people with work permits but without full-time hours, and people with expired visas) while including others (for example, clergy members and internationally adopted children).[3] In non-COVID-19 times, there are some options for free health care in Ontario for people without OHIP, such as midwives and community health centers, which have special provincial funding to serve the uninsured, though their capacity is limited.[4] Beyond these options, people without OHIP face significant barriers to affordable health care. They are often required to pay for physician and hospital services, including emergency care. Fees for these services can be prohibitively expensive, which can result in delayed or deferred care.[5]

Now, however, according to Ontario's 2020 COVID-19 memos to hospitals, everyone is entitled to receive care for medically necessary hospital services, not just testing and treatment for COVID-19.[6] Faced with the threat of the pandemic, Ontario has expanded entitlement to health services, decoupling it from citizenship and immigration status, in order to accomplish the goal of protecting population health. At the time of writing, more than a year after the policy took effect, no timeline has been announced for rolling it back. It is easy to understand why, in the context of a global pandemic, Ontario has taken extraordinary measures to prevent the spread of disease by expanding entitlement so that more people can access health care. Yet, if the government has an interest in protecting the health of all people in a time of heightened anxiety about infectious disease, why are protections not guaranteed in ordinary times? Why are people who are not normally entitled to medicare deemed to be deserving in some times but not in others?

In this paper, we use the case of Ontario to illuminate a problematic gap in the universality of Canada's publicly funded health coverage. Taking a rights-based approach, we raise questions about inequities in entitlement to medicare in Canada and point to directions for reform. As a public health PhD candidate, an equity researcher, and a human rights scholar residing in Ontario, we believe that Ontario's approach to health care entitlement during the pandemic has both national and global relevance for thinking about universal health coverage. We argue that all people, regardless of citizenship or immigration status, are deserving of care and that in order to ensure truly universal health coverage, the right to health should always be the value guiding decisions around entitlement.

A gap in the universality of publicly funded health coverage in Canada

The concept of "health-related deservingness" has been used to examine the exclusion of certain groups of people from state-sponsored health services.[7] Deservingness is conceptualized as a determination of a person's worthiness of entitlement to services made by policymakers, service providers, or frontline workers.[8] Decisions about whether

to include or exclude someone are made according to deservingness judgments that may be based on a person's citizenship or immigration status, insurance status, ability to pay, or some other perceived characteristic.[9] Problematically, these decisions can be informed by racist and xenophobic ideologies, and they may not fully take into account a person's medical needs.[10] In Canada, immigrants with less-than-full, or "precarious," immigration status are often portrayed in a negative or undeserving light.[11] Such portrayals may be used to justify judging them undeserving and excluding them from entitlement to health care.[12] Some who support the exclusion of immigrants with precarious status from medicare draw on the argument that they are undeserving because they take advantage of Canada's health care system and burden taxpayers.[13] Such arguments disregard the many ways in which precarious-status immigrants are connected to and contribute to the places where they live.

There are many reasons why individuals may live, work, or study in Canada but not be entitled to medicare as a result of not having permanent resident status. Legal scholars have highlighted how deliberate changes to Canada's immigration policy have prioritized "flexible laborers" over permanent settlement, resulting in significantly increased proportions of immigrants with temporary status who have no entitlement to medicare.[14] The Canada Health Act's restrictive definition of resident, combined with the ways in which provinces and territories further restrict medicare eligibility and federal immigration laws and policies that produce increases in temporary residence, all result in a significant gap that compromises the universality of medicare, leaving immigrants with precarious status without coverage.

According to Ontario's current pandemic policy, immigrants with precarious status, while still not eligible for the full range of services covered under OHIP, are now considered deserving of medically necessary care. They are entitled to hospital services and specific physician consultations in community settings free of charge.[15] These changes take a significant step toward resolving the gap in universal health coverage described above. Still, it is important to note that entitlement does not ensure access, and people with precarious immigration status face additional barriers to accessing care such as fear of deportation, discrimination, cultural and linguistic inadequacy of services, and difficulty navigating the health care system, among others.[16]

The implication of Ontario's expansion of entitlement to care is that in addressing a collective threat to public health, policymakers are willing to adopt far more generous criteria than usual for determining who deserves social benefits. Yet the expansion also suggests that the lives of people with precarious immigration status in Ontario hold only instrumental value, insofar as protecting their health safeguards the health of all Ontarians. This shines a light on an uncomfortable moral question embedded in the gaps within the universality of the health care system: Are we really only willing to value the health and lives of immigrants with precarious status when doing so protects the health of other people in Ontario and Canada? This concern is deepened by studies demonstrating that the health consequences of being unentitled to coverage are dire.[17] People living in Ontario without OHIP experience poorer health care and outcomes compared with those who are insured.[18] In tying health-related deservingness to citizenship and immigration status, Canada and its provinces and territories create problematic inequities in health care access and outcomes. As we have shown, the changes to OHIP entitlement motivated by the pandemic reveal that publicly funded health coverage is not at all universal in ordinary times.

A human rights approach

True universality of health coverage in Canada may be more attainable if deservingness is determined based on the fundamental human right to health rather than on citizenship or immigration status. Canada is a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which articulates the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[19] Part of this right

is every person's right to adequate health care irrespective of citizenship or immigration status. While Canada has not directly protected this right in the Charter of Rights and Freedoms, it has ratified the ICESCR and other treaties that articulate the right to health, meaning that it is legally bound to realize this international treaty right.[20] Moreover, Canadian courts have explicitly recognized that charter rights to liberty and security of the person and to nondiscrimination extend into the health care context.[21] Courts have also implicitly recognized that the core principles of universality and accessibility that underlie the right to health underpin Canada's health care system. Most recently, the *Cambie* decision protecting the single-payer system from a private challenge strongly reinforced the foundational principle underlying Canada's health care system: that access to necessary care should be based solely on medical need and not on ability to pay.[22]

The question of whether the principle that entitlement to care should be based on medical need extends to immigrants with precarious status has been settled in relation to Canada. In 2018, the United Nations Human Rights Committee held that Canada's denial of health coverage to Nell Toussaint, an undocumented immigrant, violated her rights to life and nondiscrimination and that Canada had a positive obligation with regard to Toussaint's right to life, which required the state to provide essential health care. The committee held that Canada is "under an obligation to take steps to prevent similar violations in the future, including reviewing its national legislation to ensure that irregular migrants have access to essential health care to prevent a reasonably foreseeable risk that can result in loss of life."[23] This decision emphasizes that Canada's human rights protections dictate that universal health coverage be extended to all, including those with precarious immigration status, yet the Canadian government has been slow to implement the decision. This has prompted civil society actors behind the complaint to initiate legal action in the Ontario Superior Court of Justice to challenge Canada's refusal to implement the committee's views.[24] Since the decision, there has been increasing pressure from advocates to ensure the rights of immigrants with precarious status to health care. These decisions underscore that the core norms of the right to health are already well recognized in Canada's legal and health care systems despite judicial reluctance to fully incorporate the right to health into Canadian law.

The current expansion of entitlement to health care in Ontario has been made possible by dedicating funding for medically necessary services for people without OHIP. While this is one option for expanding coverage, we recognize that such an approach reinforces a tiered health care system with differential entitlement for those with OHIP and those without, diluting the universality and comprehensiveness of health coverage. We recommend that Canada take a human rights approach to health policy, supporting universal health coverage at the federal level by requiring provinces and territories to expand medicare entitlement to all residents, regardless of citizenship or immigration status. We are in agreement with scholars who point out that simultaneous changes in immigration policy are needed in order for the issue of enforced temporariness to be fully addressed.[25] There is broad support for such an approach at the grassroots level across Canada, with advocates calling on the federal government to recognize that denial of health care based on immigration status denies human rights and threatens public health.[26]

Conclusion

A human rights approach reinforces the notion that everyone is deserving of health care, whether or not there is a pandemic, and whether or not they are a Canadian citizen or permanent resident. Health-related deservingness, therefore, should be determined based on each person's inherent human right to health, rather than on their insider or outsider status. The Ontario Ministry of Health should broaden its expansion of entitlement to care beyond the end of the pandemic, and other provinces and territories should follow suit. Expanded entitlement would reinforce a socially just inter-

pretation of medicare, one of Canada's most valued social programs, and address significant gaps in the universality and comprehensiveness that undercut its foundational principles. The COVID-19 pandemic underscores that every person counts when it comes to protecting public health, and everyone is deserving of health care. We call on Canada to be a true global model for universal health coverage and take decisive moral leadership in building a more equitable health system for all, resolving a long-standing injustice.

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