

BACKGROUND:

Legal Challenge to Cuts to Refugee Healthcare

A legal challenge has been launched in the Federal Court of Canada, arguing that the federal government's cuts to refugee health care are unconstitutional, and in breach of Canada's obligations under international law.

Canada has a long tradition of providing basic health coverage to refugees

The Interim Federal Health Care Program, a federal insurance program, has historically provided temporary health, vision and dental insurance to all refugee claimants and resettled refugees, up until the time they were either accepted as refugees and were eligible for provincial health care, or if not accepted, until they had exhausted their legal options to remain in Canada. Refugee claimants have received some type of interim federal health insurance coverage since 1957.

Cuts eliminate most federal healthcare benefits for refugees—even if they are children

On April 5, 2012 the federal government passed an Order-in-Council to make drastic cuts to the health benefits paid by the federal government to refugee claimants. These changes were made without advance notice or consultation with the provinces or health and immigration stakeholders. The cuts came into effect on June 30, 2012, including the following:

- Refugee claimants have coverage for medical services, but no longer have federal coverage for vision care, dental care or prescription medications—even life-sustaining ones such as insulin. This rule even applies temporarily to privately sponsored refugees—people who Canada recognizes as being in need of protection.

Examples:

A child refugee claimant with a heart condition awaiting his hearing develops a dental abscess. The infection can spread to his heart, yet he is unable to receive dental care while awaiting the outcome of his family's hearing.

A refugee claimant is diagnosed with cancer after he arrives in Canada but before his claim has been decided. He can see a doctor but has no insurance to cover the costs of his chemotherapy or medication.

- Refugees from countries that the Minister has designated as safe ("Designated Country of Origin" or "DCO"), such as Mexico and Hungary, as of Dec. 15, 2012 receive no medical care at all, unless their condition poses a public health risk or security concern for Canadians.

Example:

A woman who is five months pregnant flees her abusive partner in Mexico. As Mexico has been designated as a so-called "safe" country, this woman will not only have no access to any prenatal care, she will also not have health coverage for the delivery of her child, or postnatal care.

- Refugee claimants whose claims have been rejected can only obtain medical care where their condition poses a public health or security concern. Even where the person cannot be removed from Canada, due to a government-issued moratorium on removals to particularly dangerous countries like Afghanistan or Iraq, she or he has virtually no health coverage despite being able to work legally in Canada.

Example:

A refused refugee claimant from Afghanistan cannot be returned to Afghanistan, given that there has been a moratorium on all removals to Afghanistan since 1994. He is able to obtain a work permit so that he can support himself while his immigration status is in limbo. If he has a heart attack, as a refused refugee claimant, he is not entitled to health coverage for treatment or for necessary medications.

Cuts to refugee healthcare have significant impacts

The changes to the healthcare coverage for refugee claimants are significant for a number of reasons:

- This is a dramatic cut to the basic level of health coverage to some of the most marginalized and vulnerable people in Canada (sometimes, a claimant's health problems are directly related to the persecution they suffered in their home country);
- People are likely to suffer significant health risks under this new policy;
- Refugees have had federal health insurance coverage for 55 years; these cuts mark a major shift in Canada's tradition of universal health care and its humanitarian treatment of refugees;
- The changes were imposed without consulting provinces, the public or direct stakeholders;
- The changes will result in a significant downloading of costs onto the provinces and onto individual physicians who provide certain emergency services free of charge;
- The complexity of the changes, coupled with the lack of consultation, have made it difficult for the medical community to understand the cuts, and to accurately inform patients about their coverage;
- The average annual cost of the IFHP was about \$552 per refugee claimant;
- Ironically, the cuts may well increase government health costs in the long run as emergency care generally costs much more than the preventive care which is being eliminated.

Legal challenge alleges refugee health care cuts are unconstitutional

The legal challenge is being filed at the Federal Court of Canada on behalf of three patients who have had critical health care denied to them since the government cut health care coverage for refugees in June of 2012. The cuts to refugee health care are also being challenged by two public interest groups who bring additional expertise and resources to the fight: Canadian Doctors for Refugee Care, a group of doctors who treat refugees across the country, and the Canadian Association of Refugee Lawyers, a national organization of lawyers and academics who are concerned with refugee law and policy.

The challenge argues that the cuts to refugee health care violate the fundamental human rights of refugees, as protected by the *Canadian Charter of Rights and Freedoms*, without any lawful justification.

- **The cuts threaten the rights to life and security of the person in section 7 of the Charter.** The Supreme Court of Canada has already made clear in the *Chaoulli* decision that denying medical care can increase the risk of medical complications and cause severe psychological stress that threaten the security of the person and can even lead to death, in violation of section 7. The government has not clarified its reasons for these cuts. Assuming that the goal of the cuts is to discourage fraudulent refugee claims, there is no evidence that these cuts will have that result. Accordingly, the government's decision to cut health care benefits is arbitrary and unjustified.
- **The cuts amount to cruel and unusual treatment, contrary to section 12 of the Charter.** These cuts reduce or deny basic and life-sustaining health coverage for refugee claimants, likely causing significant and unnecessary pain and suffering to refugee claimants. The changes to the refugee health care coverage are inconsistent with international practice; numerous European countries provide more comprehensive healthcare coverage to refugee claimants than Canada.
- **The cuts discriminate against refugees from certain countries, and discriminate against people based on their immigration status, contrary to section 15 of the Charter.** For the first time, the type of health care coverage provided to a refugee depends on their country of origin. The federal government's changes to refugee health care insurance deny medical assistance to people from certain countries, such as Mexico and Hungary, which have been designated as safe by the Minister, while providing care to refugees from other countries. The cuts to refugee health care also discriminate on the basis of immigration status by denying basic health care to individuals residing in Canada on the grounds that they are seeking refugee protection.
- **The cuts are inconsistent with Canada's international law obligations.** Under the *Convention on the Rights of the Child* and the *Convention Relating the Status of Refugees*, Canada is obliged to provide basic health care for refugees and children. The cuts do not comply with those obligations.