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IMMIGRATION STATUS AND LEGAL ENTITLEMENT TO INSURED HEALTH SERVICES

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INTRODUCTION

One of the core principles in the *Canada Health Act* is universality.(1) Under this Act, the provinces are required to entitle all "insured persons" to the provinces' insured health services on uniform terms and conditions, or risk forfeiting the federal government's full cash contribution to the province for the fiscal year. "Insured persons" are all of the residents of the province, excluding certain groups(2) and those who have not completed a minimum period of residence (of three months or less) set by the province. According to the Act, a resident is a person lawfully entitled to be in or to remain in Canada who makes his home and is ordinarily present in the province, but does not include a tourist, a transient or a visitor to the province.

How these definitions and concepts intersect with immigration status is the subject of this paper. Immigration status has a significant bearing on access to publicly funded health insurance and care. However, the relationship is not straightforward, static, or consistent.

This publication begins with an overview of different categories of immigration status and the respective legal entitlements to insured health services. It then highlights some of the challenges identified in research projects and academic studies stemming from immigrant experiences with the health care system in Canada. It concludes with a discussion of the federal role in ensuring immigrant access to health care.

The key focus of this paper is immigrants currently residing in Canada; the role of health in determining admissibility to Canada is not covered. Problems arising from immigrants' lack of awareness of program entitlements or arising from social and cultural barriers have been studied elsewhere(3) and are also beyond the scope of this paper.

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(1) *Canada Health Act*, R.S.C. 1985, c. C-6, ss. 7 and 10, http://laws.justice.gc.ca/en/ShowTdm/cs/C-6///en.

(2) Members of the Canadian Forces or the Royal Canadian Mounted Police and federal penitentiary inmates are not considered "insured persons" under the *Canada Health Act*.

(3) For instance, Anita J. Gagnon, *Responsiveness of the Canadian Health Care System Towards Newcomers*, Commission on the Future of Health Care in Canada, Discussion Paper No. 40, 2002; Health Canada, *Issues in Equity and Responsiveness in Access to Health Care in Canada*, 2001; Jacqueline Oxman-Martinez et al., "Intersection of Canadian Policy Parameters Affecting Women with Precarious Immigration Status: A Baseline for Understanding Barriers to Health," *Journal of Immigrant Health*, Vol. 7, No. 4, October 2005.

IMMIGRATION STATUS AND INSURED HEALTH SERVICES

Table 1 shows immigration figures for 2007 by category of immigration. This section explains what health care insurance plan, if any, people in each category are entitled to. However, it provides only an overview – there are many "gradations" of status not included, such as persons with sponsorship breakdown or successful refugee claimants who did not apply for permanent resident status within the required period.

Table 1 – Immigrants at a Glance, 2007

Permanent Residents: Economic and Family Class[4]	197,478
Permanent Residents: Refugees Selected Abroad[5]	11,162
Permanent Residents: Accepted Refugee Claimants and their dependents[6]	16,794
Temporary Residents: Foreign Workers[7]	165,198
Temporary Residents: Students[8]	74,009
Refugee Claims Referred for Consideration[9]	27,912

A. Permanent Resident Status

This status refers to individuals who have been granted the right to come and live in Canada permanently. In general, after residing in Canada for three years, permanent residents can apply for Canadian citizenship.

Permanent residents have the same access to health care as Canadian citizens. Some provinces, including Ontario, British Columbia, Quebec, Alberta and New Brunswick, require new residents to wait for up to three months before they qualify for provincial health

(4) Citizenship and Immigration Canada, *Facts and Figures 2007*.

(5) Ibid.

(6) Ibid.

(7) This total includes initial entry and re-entry data for work permits of varying lengths. Citizenship and Immigration, *Facts and Figures 2007*. The total number of temporary foreign workers in Canada present on 1 December 2007 was 201,057.

(8) This total includes initial entry and re-entry data for work permits of varying lengths. Citizenship and Immigration, *Facts and Figures 2007*. The total number of foreign students in Canada present on 1 December 2007 was 176,116.

(9) Immigration and Refugee Board of Canada, "Refugee Claims," http://www.irb-cisr.gc.ca/en/media/infosheets/rpdfacts_e.htm.

insurance.[10] When not covered in the new province of residence, Canadians generally continue to enjoy coverage from their previous province of residence, but newcomers to Canada do not have this benefit and are advised to purchase health insurance.

Refugees selected abroad[11] are eligible for permanent resident status immediately upon arrival in Canada. Where there is a delay in obtaining permanent resident status and refugees are not eligible for provincial health insurance plans, refugees may obtain temporary resident status and health coverage through the Interim Federal Health (IFH) program. Even after coverage under provincial health insurance has been granted, refugees are eligible for a certain period[12] for supplemental health insurance through the IFH program, including emergency dental, vision and pharmaceutical care.

The Interim Federal Health (IFH) Program

Under a 1957 Order in Council, the federal government is authorized to provide limited health services to certain immigrants – now almost exclusively limited to refugee claimants and Convention refugees and persons detained for immigration purposes.[13]

The IFH Program is intended to provide urgent and essential health services to immigrants in the above categories who are unable to pay for such services on their own. Eligibility for IFH benefits expires after a specified period (no longer than 12 months) and is renewable.

IFH benefits include: essential health services for the treatment and prevention of serious medical/dental conditions (including immunizations and other vital preventative medical care); essential prescription medications; contraception, prenatal and obstetrical care; and the immigration medical examination.

The IFH program is administered by the FAS Group of Companies.[14] In 2006–2007, the IFH program provided access to health services for over 95,000 eligible clients at a cost of $44.7 million. The number of claims processed during that period was 517,300.[15]

(10) Certain groups are exempt from the waiting period in different provinces. For instance, people moving to Canada may not have to wait the three-month period in Alberta. In Quebec, women who are pregnant or who are victims of violence are able to access medical services free of charge during the waiting period.

(11) Some of these refugees are considered to be "Convention Refugees," as defined by the United Nations 1951 *Geneva Convention Relating to the Status of Refugees* and its 1967 Protocol. Refugees selected from abroad for resettlement to Canada may also be members of the Country of Asylum Class or Source Country Class. For information on the three classes of refugee, see Citizenship and Immigration Canada, "Refugees: Resettlement from outside Canada," http://www.cic.gc.ca/english/refugees/outside/index.asp.

(12) This period is generally similar to the sponsorship period of one or two years.

(13) FAS (Funds Administrative Service Inc.) Benefit Administrators, *Information Handbook for Health-Care Providers*, November 2006, p. 5.

(14) FAS Health and Pension Benefit Administrators website, http://www.fasadmin.com/default.asp.

(15) Citizenship and Immigration Canada, *Departmental Performance Report 2006–2007*, November 2007, p. 34.

B. Temporary Resident Status

This status refers to individuals who hold a temporary resident visa or other document that entitles them to enter and reside in Canada for a defined period. This category includes temporary foreign workers, students and visitors.

Most provincial governments provide health insurance to temporary foreign workers with long work permits, generally 6 to 12 months.(16) In addition, there are some specific provisions for certain foreign worker programs. For instance, seasonal agricultural workers are entitled to provincial insurance in some jurisdictions despite their typically shorter work permits.(17) A second example is the program for workers with lower levels of formal training, who are entitled under federal rules to private health insurance at their employer's expense for periods when they are not covered by provincial health insurance. Other temporary foreign workers with short-term work permits have to make their own arrangements for health insurance.

Temporary residents with a study permit are not treated uniformly across the country: in some provinces, they are covered under provincial health insurance, while in other provinces, mandatory health insurance is provided through the educational institutions.(18)

Visitors are excluded from provincial health insurance and must rely on private health insurance. They have to pay out of pocket for medical services received.

A subgroup of temporary residents are those holding **Temporary Resident Permits**. Temporary Resident Permits are issued in certain special cases to allow people who are inadmissible under the *Immigration and Refugee Protection Act* to enter or remain in Canada. There are a variety of reasons for issuing a temporary resident permit, and the reason for the permit may affect the health care coverage to which a person is entitled. For instance, if an individual is a victim of human trafficking, he or she is entitled to IFH benefits for the duration of his or her temporary resident permit.

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(16) For instance, in British Columbia, foreign workers with a permit of 6 months are eligible for provincial insurance, in Manitoba and Saskatchewan foreign workers with a permit of 12 months are eligible for provincial insurance, and in Nova Scotia, individuals with a work permit are eligible to apply for provincial insurance the first day of their 7th month of residence in the province.

(17) For instance, temporary foreign workers are eligible for health insurance in Ontario immediately upon arrival. In addition, governments participating in the seasonal agricultural worker program make arrangements for private supplemental insurance at a low cost to workers across the country.

(18) For instance, in Nova Scotia, foreign students are eligible to apply for provincial health insurance on the first day of their 13th month of residence; in Saskatchewan, foreign students are eligible for provincial health insurance immediately upon arrival; and in Manitoba, foreign students are not eligible for provincial health insurance.

C. Refugee Claimants

Some people come to Canada and claim refugee status at the border or from within Canada. Immigration officers are required to decide within three working days whether such a person is eligible to make a claim for protection in Canada. Those who are eligible to have their claim referred to the Immigration and Refugee Board of Canada are also eligible for IFH benefits, which are intended for people without means.

Claimants whose claims for refugee status are rejected by the Immigration and Refugee Board face removal from Canada. Failed refugee claimants remain eligible for IFH coverage until they leave the country. This also applies to those who have a stay (or hold) on removal, whether due to a moratorium on returns, as discussed below, or for some other reason, such as awaiting a pre-removal risk assessment decision. Claimants are not eligible for IFH benefits if they abandon or withdraw their claim for refugee status.

Some refugee claimants, despite having been denied protected person status, will not be returned to their country of origin because Canada has in place a moratorium on removals to countries where there is generalized insecurity. These countries include Afghanistan, Burundi, the Democratic Republic of Congo, Haiti, Iraq, Liberia, Rwanda, and Zimbabwe. Claimants from these countries have limited means by which they may become permanent residents; they remain temporary residents. People in these circumstances may be reliant on IFH benefits for years.(19)

Refugee claimants who are granted the status of "protected person" by the Immigration and Refugee Board may apply for permanent resident status and can stay in Canada. Successful refugee claimants become eligible for provincial health insurance at some point in the process of applying for and obtaining permanent residency.(20)

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(19) Sonia ter Kuile et al., "The Universality of the Canadian Health Care System in Question: Barriers to Services for Immigrants and Refugees," *International Journal of Migration, Health, and Social Care*, Vol. 3, Issue 1, July 2007, p. 20.

(20) For instance, in Ontario, an individual is eligible for provincial health insurance if he has submitted an Application for Permanent Residence and has been confirmed by Citizenship and Immigration Canada as having satisfied the medical requirements for admission. In Manitoba, eligibility is granted on the date permanent residency is granted.

D. Non-status Population

This group refers to people with no current legal status in Canada. It includes both those who have never had legal status in Canada, as well as those whose legal status (e.g., temporary resident status) has expired or been revoked.

Non-status people are not entitled to provincial health insurance. However, in Ontario, funding is provided to community health centres to provide limited health services to this population. In general, non-status people have to pay out of pocket for medical services received.

ISSUES

The preceding discussion reveals that the policy framework guiding immigrant access to health insurance and care is complex and characterized by provincial differences, exceptions to the rules, and varying entitlements for people of differing statuses. A review of the literature(21) revealed concerns over immigrant access to health insurance and care under the current system, in particular with regard to eligible benefits and benefit implementation.

A. Eligible Benefits

- **Limitations of IFH:** The limited nature of IFH benefits may affect recipients' health and well-being. On-going mental health services are not eligible,(22) which may be an area of particular need for traumatized populations that access the benefit. In addition, practitioners have noted short-comings in IFH benefits to assist people with common conditions, such as hypertension, diabetes, cataracts, and arthritis,(23) as well as with dental health.(24)

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(21) Most of the published research in this area focuses on challenges and draws on qualitative methods, such as interviews. This type of data provides a rich account of the experience of some people, but does not quantify the incidence of problems. It is also less likely that it will provide information about satisfactory experiences.

(22) Mental health services covered under the IFH program include consultations with a psychiatrist, hospitalization for psychiatric disorders, initial psychotherapy session with a physician (and some follow-up if approved), and essential medication. The Standing Senate Committee on Social Affairs, Science, and Technology, *Out of the Shadows at Last*, May 2006, p. 341.

(23) ter Kuile et al. (2007), p. 22.

(24) Gagnon (2002), p. 12.

- **Limitations of private insurance:** While uninsured migrants can purchase private health insurance, research has found that the cost is prohibitive and coverage is often emergency oriented, rather than preventive.(25) Emergency care might not be adequate for people with conditions such as pregnancy or HIV. A study of migrant workers in British Columbia found that hospitals and walk-in clinics did not always recognize private insurance, and that the requirement to pay up front for costs (even with subsequent reimbursement) was a significant barrier to care for immigrants relying on private insurance.(26)

- **Inconsistent public services for the uninsured:** Free or non-market-rate medical services for the uninsured are available in an *ad hoc* fashion. Even in Ontario, where community health centres receive some funding, services are limited, there are long waiting lists, people are turned away,(27) and doctors often have to decide for themselves whom to serve.

  Service providers in Toronto reported that many agencies (health and otherwise) do not have an official policy about working with non-status people.(28) The *ad hoc* nature of service makes it difficult to make referrals or provide additional care, because subsequent health professionals or even other staff members might not agree to serve a given client.(29) As a result, health services may not be consistent or reliable. This may lead to "run around" for uninsured people trying to access services.(30) The situation also places a heavy burden on front-line service providers – one study found that "they spend a considerable amount of time trying to negotiate for services to be made accessible to individuals, to ensure that paperwork is up to date and correct, and to try to protect [clients] from direct bills or from the threats of the collecting agencies."(31)

B. Benefit Implementation

- **Administrative Delays:** Administrative delays may occur during the approval process for provincial health insurance or the process of changing immigration status. For instance, such delays may affect refugee claimants awaiting eligibility determination, who have no health insurance; while this process is normally completed in a few days, it may extend to months(32) for those suspected of involvement in human rights violations, criminal activity, or

(25) Oxman-Martinez et al. (2005), p. 254.

(26) David Fairey et al., *Cultivating Farmworker Rights*, Canadian Centre for Policy Alternatives, Justicia for Migrant Workers, and the BC Federation of Labour, June 2008, p. 47.

(27) Judith K. Bernhard et al., "Living with Precarious Legal Status in Canada: Implications for the Well-Being of Children and Families," *Refuge*, Vol. 24, No. 2, 2007, p. 105.

(28) Carolina Berinstein et al., *Access Not Fear: Non-Status Immigrants and City Services*, February 2006.

(29) Ibid.; see also ter Kuile et al. (2007).

(30) Access Alliance Multicultural Community Health Centre, *Racialised Groups and Health Status: A Literature Review Exploring Poverty, Housing, Race-Based Discrimination and Access to Health Care as Determinants of Health for Racialised Groups*, Toronto, 2005.

(31) ter Kuile et al. (2007), p. 23.

(32) Gagnon (2002), p. 11.

security threats. Convention refugees awaiting permanent resident status are another example of people who may face "between status" delays. Studies suggested that people could wait months or years for legally entitled health insurance, due to administrative delays of one kind or another.(33)

- **Non-recognition of IFH benefits:** Several studies found that front-line workers, including doctors and emergency room personnel, do not always recognize the IFH benefit.(34) Furthermore, doctors sometimes refuse to deal with patients covered by IFH benefits, because the paperwork is onerous and the reimbursement slow. Emergency rooms were found to be the most accessible option available to immigrants reliant on IFH benefits, as the financial and administrative burdens were less onerous for these larger institutions.

- **Complex categories:** The different categories of immigration status and periods of eligibility and ineligibility make it challenging for front-line workers to discern who is insured and for what services. At least one analyst suggests that this bureaucratic complexity results in more people being refused care,(35) although the question has not been subject to systematic study.

C. Implications of Current Legal Entitlements

What are the implications of these findings on immigrant health and well-being, and on Canadian society? While further research is required, some conclusions can be drawn from the foregoing. Research suggests that it is very common for immigrants to delay seeking medical attention. Immigrant families waiting through the three-month eligibility period may delay seeking medical care for financial reasons, and the non-status population may be reluctant to present themselves for medical care for fear of jeopardizing their position in Canada. Delayed care, in turn, can have serious health implications, ranging from complications in pregnancy, to more severe health needs (for instance, a ruptured appendix) to even death.(36) Personal and public health may be compromised by inadequate benefits and reluctance to pursue private insurance.

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(33) ter Kuile et al. (2007), p. 21; Paul Caulford and Yasmine Vali, "Providing Health Care to Medically Uninsured Immigrants and Refugees," *Canadian Medical Association Journal*, Vol. 174, Issue 9, 25 April 2006, pp. 1253–54.

(34) Baukje Miedema, Ryan Hamilton and Julie Easley, "Climbing the walls: Structural barriers to accessing primary health care for refugee newcomers in Canada," *Canadian Family Physician*, Vol. 54, Issue 3, 2008, pp. 335–36; Gagnon (2002), p. 12; ter Kuile et al. (2007), p. 19.

(35) Jill Hanley, "Newcomers in Health Care Limbo – Quebec Groups Protest," *Canadian Women's Health Network*, Winter 2006/07, p. 12.

(36) Cécile Rousseau et al., "Health Care Access for Refugees and Immigrants with Precarious Status," *Canadian Journal of Public Health*, Vol. 99, No. 4, 2008, pp. 290–92.

Often uninsured immigrants who access medical services have to pay out of pocket, which may be very costly. Research and media reports indicate that costs for hospitalization are often in the tens of thousands of dollars, creating a barrier to medical care and a significant additional financial burden. The debt affects not only immigrants themselves, but also their families overseas, who, for instance, may not be able to reunite under the live-in caregiver program, or who may not receive remittances, because of the health care debts. Vulnerability to the risk of unaffordable medical expenses separates established Canadian citizens and permanent residents from newcomers and others who are uninsured.

Finally, research shows that parents' immigration status affects the whole family. Non-status parents' fear of discovery may prevent them from inquiring into potential health benefits for Canadian-born children and may prevent them from presenting their children for care.(37) Accordingly, the incidence and extent of problems in accessing health care may be underestimated.

These issues raise several challenges for policy makers. It is acceptable practice worldwide to reserve state-funded services for citizens or permanent residents, and to offer limited (or no) services to others. However, some of the limitations on health insurance and care (such as waiting periods or excluding certain groups) may be perceived as unfair, especially when the individuals are working, paying taxes and contributing to the Canadian economy or society.(38) Short- and long-term policy trade-offs also pose a challenge, with short-term savings leading to possible long-term costs, especially in the case of immigrants who ultimately become fully insured residents of Canada. Jurisdictional intersections between immigration and health also contribute to the complexity. These challenges and possible responses will be more fully explored in the following section, on the federal role in immigrant access to insured health care.

FEDERAL ROLE

The federal government has responsibility for various aspects of the problems described above, as well as for possible solutions.

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(37) ter Kuile et al. (2007); Bernhard et al. (2007).

(38) This argument is made by these authors: Laura Simich, Fei Wu and Sonja Nerad, "Status and Health Security: An Exploratory Study of Irregular Immigrants in Toronto," *Canadian Journal of Public Health*, Vol. 98, No. 5, September–October 2007, pp. 369–73; and Sylvia Reitmanova, "Health Insurance for International Students: Taxation Without Representation," *Policy Options*, March 2008, pp. 71–4.

First, the federal government has a role in the admission of immigrants to Canada. Every immigrant must interface with the federal government to gain entry to Canada. This point of contact could be used to greater advantage in making immigrants aware of their health care limitations and entitlements. The federal government's role in admissions could also be used to strengthen and enforce requirements in relation to private health insurance.

Second, the federal government is responsible for the health care of the clients of the IFH program. Policy decisions (such as eligible benefits) and issues of implementation (such as paperwork required) are within the federal purview. A review of the IFH suggests that Citizenship and Immigration Canada is cognizant of the changing environment for this program – in particular, processing times for Immigration and Refugee Board decisions and possible effects on IFH clients.(39) The IFH program is not subject to parliamentary oversight on a regular basis, and this issue may warrant consideration.

Third, the federal government has, in recent years, been playing a leadership role in the areas of health care and public health. Delayed or denied health care is of concern from a public health point of view, especially in relation to communicable disease. The federal government has an on-going responsibility to ensure that the lack of health insurance and care for certain populations does not jeopardize the health of Canadians.

Immigration policy in Canada is likely to get more complex. Responsibility for immigrant selection is being devolved to the provinces to an ever-greater extent through the Provincial Nominee Programs (PNPs) and the ability of temporary residents to transition into permanent residents is being facilitated through the Canadian Experience Class (CEC), introduced in 2008.(40) These multiple pathways to permanent residency give prospective immigrants greater choice about how to enter Canada and where to live. Differences in provincial health insurance and care may become important factors in making these decisions, which could affect settlement patterns or influence provincial health policies of the future.

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(39) Citizenship and Immigration Canada, *Audit of the Control Framework for the Interim Federal Health Program: Final Report*, 21 April 2004, http://www.cic.gc.ca/English/resources/audit/ifh.asp.

(40) The Canadian Experience Class allows certain skilled temporary foreign workers and international students with Canadian degrees and Canadian work experience to apply for permanent residency from within Canada.

Immigration status will continue to be a determining factor for access to health insurance and care. The changes mentioned above and the long processing times for refugee claims suggest that the health profession will increasingly face the challenge of providing care to people whose immigration status is not static. Finally, Canada will continue to be a destination of hope for those fleeing persecution and seeking a better life for themselves and their families, so the challenge will remain to provide health insurance and care to non-citizens and people with little legal claim to Canada's assistance.