

Is Health Care a Right? Health Reforms in the USA and their Impact Upon the Concept of Care

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In 2008 United States President Barack Obama declared that health care “should be a right for every American”.¹ This statement, although noble, does not reflect US healthcare statistics in recent times, with the number of uninsured reaching over 50 million in 2010.² Such disparity has sparked a political drive towards change, and the introduction of the Patient Protection and Affordable Care Act (PPACA).³ These changes have been highly polemical, raising the fundamental question of whether health care is a right; a contract between the nation and its inhabitants granted at birth, or an entitlement; a privilege that must be earned as opposed to universally provided.

Access to healthcare in the US is mediated by insurance coverage, either in the form of private or employer based cover, which may be government based for public sector employees or private for private sector employees. The majority of spending on healthcare however, comes from government expenditure on health programs such as Medicare, Medicaid, Tricare, and the State Children’s Health Insurance Program (SCHIP).⁴ Medicare is a federal government funded social insurance program that provides health insurance to people aged 65 and older, younger people with disabilities, and those with end stage renal failure requiring dialysis. Medicaid is a means tested insurance coverage program for individuals with low incomes and their families, and is jointly funded by state and federal governments. Tricare is a healthcare program that provides healthcare insurance for military personnel, retirees, and their dependents. The SCHIP provides states with federal government funding to provide health insurance to children from families with modest incomes that do not qualify for Medicaid. As such, although the majority of the US population is insured by federal, state, employer, or private health insurance, the remainders go uninsured.

A US census bureau report suggested that 16.3% of the population, 49.9 million people, did not have health insurance in 2010.⁵ Households with an income of \$25,000 or less made up the largest proportion of the uninsured.⁵ Lack of access to healthcare has also been shown to be associated with increased mortality; a 2009 study found that there were 44,800 deaths annually in the US that were directly associated with lack of healthcare insurance.⁷

This article presents the argument that health care should be a human right, drawing upon: i) the political grounds for health care provision, and ii) ethical and moral frameworks supporting its introduction. These points are illustrated using the Medicare, Medicaid and SCHIP programs, in addition to assessing the extent to which the PPACA will convert health care from an entitlement to a right in this USA.

Should Health Care Be Considered a Right?

When examining the concept of health care as a ‘right’, one may consider it as either a legal or a moral one. Few would

object to the proposition that accessible healthcare for all is in essence a moral right,⁸ however, less would be of the opinion that it is a universally legal one. In the buildup to the 2008 presidential election, when questioned about whether health care was a right, a privilege, or a responsibility, then-Senator Obama asserted that health care should be a right. In Obama’s argument he cited the case of his mother’s struggle with cancer, he suggested that there was a fundamental injustice with a country not entitling it’s sick to healthcare due to their inability to pay.¹ The Affordable Care Act, discussed in the 2012 presidential campaign, is projected to substantially reduce the number of uninsured in every age, income group and state, and thus increase access to care.⁹

A system that distributes healthcare unevenly, on the basis of any determining factor other than necessity, raises numerous questions about how ethical that system is. In a society where disparity in the level of care or access to care exists, inevitably there will be individuals who fail to receive the care for which they desperately need. Failure to access care early on will undoubtedly lead to individuals consuming a greater proportion of healthcare resources, should the degree of their morbidity escalate, and therefore increase the burden on health provision.¹⁰

Some may suggest that enshrining health care as a right in law may lead to over-utilisation of healthcare resources,¹¹ however the consumption of these resources does not result in fiscal or otherwise measurable gain for the individual seeking them. Although, one could argue that there may be personal satisfaction in over-utilisation. Healthcare is an essential requirement for well-being, conferring on one the ability to do other activities; it is, therefore, a condition upon which many other factors are determined.

Another fundamental difficulty with considering healthcare as a right is that this right, unlike many others, is dependent upon the resources of a society,¹² and the ability to meet the demands of the population without disparity in distribution and allocation of medical care. As such, even if this right were to be upheld universally, there would still be a gulf in care provision for individuals between different societies. To address this apparent gulf we need to assess what exactly constitutes a fair system of distribution.¹³ One could consider establishing a minimum level of health care provision.¹⁰ However, given that the health needs of different communities and vulnerable groups vary, defining this minimal level is challenging.

The World Health Organisation (WHO) defines health as “a state of complete physical, mental and social well-being”.¹⁴ Healthcare, in turn, can be described as the provision of services necessary to treat disease and promote health. Several lines of political evidence support the concept of health care as a right:

First, in 1943, President Roosevelt proposed a ‘Second Bill of Rights’ that included: “The right to adequate medical care and the opportunity to achieve and enjoy good health”.¹⁵

Second, the Universal Declaration of Human Rights published by the United Nations provided: “Everyone has the right to a standard of living adequate for the health and well-being... including...medical care”.¹⁶

Third, the International Covenant on Economic, Social, and Cultural Rights (signed by the US in 1977) stated that it is “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” in addition to: “the creation of conditions which would assure to all medical service”.¹⁷

Undermining the utility of these statements is the unclear definition of healthcare that could include a wide range of social, economic, organisational, and scientific issues, making the allocation of responsibility challenging.¹⁸ Moreover, the achievement and enjoyment of good health by all may be perceived as an unrealistic aspiration in the context of today’s economic austerity, rising healthcare costs, and aging population.

Ethical frameworks further support the notion of healthcare as a human right; Peter Singer adopts a utilitarian standpoint – the greatest good for the greatest number, arguing that:

- i) Suffering from a lack of medical care is harmful.
- ii) If it is within our power to prevent something harmful from happening, without sacrificing anything nearly as important, it is wrong not to do so.
- iii) By improving health care, suffering can be prevented without making significant personal losses.
- iv) Therefore, by not improving health care, and to an extent, by not introducing health care as a right, we are doing something wrong.^{19, 20}

There are limitations to this: it applies to individual actions rather than governmental change. Further, it assumes that

health care can be improved without significant personal loss when in actual fact the introduction of, for example, the PPACA has been estimated by some to be of significant cost to the US, let alone the implementation of universal care.²¹

Another supportive framework is the Capabilities Approach,²² whereby health care is fundamental to the capacity of a person to conduct all other individual rights, making it of primary importance. However, it could be argued that although people need health care, food, and shelter, this does not necessarily obligate others to make such provisions available.¹⁸ Food, for example, is not considered a right; companies are permitted to sell it, and it can be withheld from those who cannot afford it.

The difficulty in introducing health care as a right also lies in the fact that care, unlike other goods, cannot be simply quantified and allocated equally to members of a society. Thus, there comes a point where the lack of responsibility of one person must be compensated by an increase in another, where the healthy pay for the unhealthy.

We, therefore, find that the question of whether health care should be offered as a right is complex, with ethical, judicial and financial tensions.

Consequences of the PPACA

The PPACA was introduced in 2010, and included a number of changes to US healthcare such as reducing pre-existing condition exclusions, and restricting annual dollar limits on coverage, in turn expanding insurance coverage to over 30 million Americans.²³ This has moved the US towards offering universal care.

However, it must be noted that the quality of this care is worse compared with that received by the majority of the population. For example, although Medicaid has been expanded, it has been associated with the longest length of stay and the highest risk of deaths for a number of surgical procedures compared with those under private insurance.²⁴

Therefore, the health reform will simply rebrand those with poor access to care to those covered by Medicaid, Medicare, or SCHIP, whereby they still receive substandard health care.

When the PPACA was enacted by congress it was broadly received with skepticism. Many opponents of the act challenged the constitutionality of the individual mandate and the Medicaid expansion, citing that it is illegal, under US constitution, to require individuals to buy health insurance.²⁵ Indeed, twenty-six states and the National Federation of Independent Business opposed this act in federal district court. The case was taken to the US Supreme Court, which on 28th June 2012 upheld the core of this new health care legislation that requires all US citizens to hold health insurance or be subject to a tax if failing to do so. The Supreme Court held that the tax levied on those who failed to provide minimum or adequate health coverage was permissible under congress’s power to tax under article 1 of the US constitution.²⁶

Other health related stipulations require that health insurers can no longer discriminate the sale of insurance on the basis of health status, that individuals in the same age group are charged the same premium, and that organisations with a workforce of greater than 50 employees provide affordable health insurance.²⁷ The legislation also introduced a subsidy for low- to middle-income individuals and families in an effort to reduce the financial impact of accessible healthcare to those who can least afford it.²⁷

The successful supreme court ruling culminates the efforts by the US government to overhaul the nation's health care system. Most recent efforts to implement change to the US system have fallen victim to opposition, but this landmark ruling paves the way to improving accessibility of care to all on the basis of need. The US has some of the highest survival rates for diseases such as prostate and breast cancer,²⁸ yet despite advancements in medical treatment there has been significantly less progress in medical coverage, such that those suffering from simple treatable ailments elude care. Following this Supreme Court ruling however, the US is set to bring about a paradigm shift in their approach to healthcare.

Like the 2012 Supreme Court ruling, the 2012 presidential election represented a major milestone for the PPACA. President Obama's re-election ensures that the law's major provisions remain unscathed and will go into effect by January 2014. Despite the President's campaign promises to implement the PPACA, and his subsequent re-election, many Republican governors refuse to create the state-based health insurance exchanges required by the law. The PPACA, however, obviates such opposition. In the event that state governments refuse to create healthcare exchanges, the federal government has the right to create an exchange for it. Despite the specificity of its provisions, the full impact of the PPACA on the US healthcare system remains uncertain. The only certainty is the impact the PPACA will have in ameliorating the suffering of some of the most disadvantaged citizens in the United States. The PPACA will bring American health policy more in line with the access-for-all vision of European and Canadian health systems. In the wake of President Obama's re-election, it seems that the American people agree, despite its complex implications, with candidate Obama's declaration that "healthcare should be a right for every American".

Conclusions

US health care has gained significant attention in recent years, with a strong drive towards a right-based system. This movement is not simple, but rather burdened with complexities of funding, logistics, ethics, and rationality. The US remains one of the few industrialised nations in the world that does not guarantee universal healthcare access.²⁹ In the current framework of healthcare provision, concerted efforts to ensure universal health insurance coverage or entitlement need to be made in order to achieve universal access to healthcare. Ensuring access to healthcare is a compulsory requirement of healthcare as a right.³⁰ Recent US healthcare reforms have gone some way to achieving this. However, continued concerted efforts are required in order to achieve a comprehensive solution. It is also important to continue to pursue the aspiration of rights-based health care, but it should also be appreciated that the journey will take time, persistence, and a deep understanding of the system to navigate its inherent complexities.

Ethical approval

No ethical approval required for this study.

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Conflicts of interest

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Author contributions

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