

Healthcare as a Human Right

Where Philosophy Meets Policy

Key Takeaways:

- International agreements recognize healthcare as a human right, as do the vast majority of OECD nations.
- The US does not currently explicitly recognize such a right in domestic law.
- Proponents of the “healthcare is a human right” argument believe that the right includes both freedoms and entitlements.
- Opponents of the “healthcare is a human right” argument believe that such an approach is in opposition to American tradition and jurisprudence by creating a “positive right,” which then falls upon a third party to deliver.
- Disagreement on the issue may or may not have policy implications; it is certainly possible for one to support universal healthcare coverage without recognizing a “right” to such.
- Debate on the topic includes debate on how “healthcare” is defined.
- The US requires emergency treatment as a “service” or a “right” that may not be refused based on ability to pay.
- The possible answers to the question of whether healthcare is a human right may exist on more of a spectrum than a binary “yes” or “no.”

Background

“Healthcare is a human right.” The phrase is often used in political contexts, yet its exact meaning is subject to interpretation and its policy implications are undetermined. What precisely is “healthcare”? What precisely is a “human right”? This short piece explores the issue from both perspectives:

The Argument That Healthcare is a Human Right

Many argue that healthcare is a human right. Proponents say that this has been established through international agreement. The United Nations and the World Health Organization, amongst other entities, recognize this truth.

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

-Article 25 of the United Nations' Universal Declaration of Human Rights

“The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”

-Preamble to the World Health Organization’s Constitution

Human rights are understood to be universal and inalienable. They apply equally, to all people, everywhere, without distinction. Human Rights standards – to food, health, education, to be free from torture, inhuman or degrading treatment – are also interrelated. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

Proponents claim that rights do not vanish into the ether when a nation fails to honor them; the nation instead is in violation of its citizens’ human rights. The terms of any debate on this topic should not be whether healthcare is indeed a human right; that debate was settled internationally in the 1940s. Rather, the debate should be on the question “Does the US meet its human rights obligations to provide healthcare to its citizens?”

Many would say that the answer to this question is a resounding “no.” Of the 36 member nations within the Organization for Economic Cooperation and Development, only the

“Healthcare is a human right. The aim of healthcare delivery is to maintain and improve health, to alleviate disability, and to provide access to appropriate health services to all persons regardless of their ability to pay. Caring for sick people is a social obligation that extends beyond the commercial realm. While ownership of institutions or other organisations that deliver medical care may be appropriate, care itself cannot be owned and must be viewed as a service that is rendered and remunerated under the stewardship of those in the healthcare system, rather than merely sold to individuals or communities.”

-Donald Berwick, et al
The Tavistock Group



United States, Mexico, South Korea, and Turkey do not recognize universal healthcare as a basic human right. And while human rights do not depend on popular opinion, it is notable that the majority of Americans believe that the state must be the guarantor of the human right to healthcare. In its most recent poll on the subject, Gallup found that 56 percent of the US population believes that “it is the responsibility of the federal government to make sure all Americans have healthcare coverage.” Of course, this number has fluctuated over time and political cycles and is not an overwhelming majority, but only 34 percent of Americans believe both that the government is not obligated to ensure all Americans are covered and oppose a government-run system.

The US has in some ways started down the path toward government as both guarantor and provider of health care. The establishment of the Medicare and Medicaid programs in 1965 guaranteed that health insurance be available to the elderly and poor women and children, respectively. The Emergency Medical Treatment and Labor Act (EMTALA), signed by President Reagan in 1986, requires all hospitals that accept Medicare to stabilize and treat patients presenting at the emergency department. Under EMTALA, all Americans have a right to some healthcare - it just happens to be the most expensive and least preventative form of care.

The Affordable Care Act of 2010 built upon some of these programs, expanding Medicaid in many states, but its adoption has been patchwork and millions of Americans continue to lack healthcare coverage. Those who believe that healthcare is a right demand that the status quo must be expanded to guarantee that Americans’ human rights are being met. From a policy perspective, there is no single, prescribed way of guaranteeing a right to healthcare. Other nations achieve this goal through the public sector, through a structured marketplace for the private sector, or through an amalgam of the two. Proponents argue that government is the ultimate guarantor and accountable entity for healthcare to be available to all citizens irrespective of their ability to pay for it.

When a nation has the capacity to treat the sick, many believe that it is simply unconscionable not to do so. As the world’s wealthiest nation, the US certainly has the ability to provide healthcare to all of its citizens. What it lacks is the political will to say “In

this country, no one should suffer or die unnecessarily. One's health should not be coupled with one's wealth. We must stop rationing care by income."

The Argument That Healthcare is Not a Human Right

Many Americans believe that healthcare is a commodity, not a right. They argue that, like food and shelter, healthcare is certainly an important service, but rights are not created by necessity. Defining healthcare as a right not only encroaches upon essential American freedoms, it also serves to undermine the healthcare system itself.

In America, rights have always been understood as "negative rights," i.e., restrictions placed upon government's ability to prohibit or control an individual's behavior. Examples of this include the US Constitution's Bill of Rights, which forbids the government from abridging the freedom of speech, for example. Nowhere in the US Constitution is it written that the government must ensure that individuals are *provided* or *given* services. A "right to

"With regard to the idea whether or not you have a right to healthcare you have to realize what that implies. I am a physician. You have a right to come to my house and conscript me. It means you believe in slavery. You are going to enslave not only me but the janitor at my hospital, the person who cleans my office, the assistants, the nurses... You are basically saying you believe in slavery."

-Kentucky Senator
Rand Paul, M.D

healthcare," breaks with centuries of American tradition and jurisprudence by creating a "positive right," which then falls upon a third party to deliver. This and other such positive rights fall short of the American ideals of freedom because they necessarily compel other citizens to provide these services or contribute in some way to their provision.

Opponents of healthcare as a right claim that rights are inalienable. They do not and cannot "cost" something. Were healthcare to be considered a right, the question then becomes: Who must provide the services necessary to fulfill this right? Does that encroach upon the rights of medical providers to practice their trade in line with their conscience? Does that encroach upon the rights of medical providers to be paid for their work? Does that encroach upon other citizens, who may not wish to pay for

others' medical services - potentially including medical services that fall outside their conscience?

Moreover, if we determine that healthcare is a right, we must have a precise definition of what constitutes "healthcare." This leads to a hornet's nest of challenges. One person's "right to healthcare" may include, for example, gender reassignment surgery or abortion or euthanasia - procedures that strongly conflict with the religious or secular values of others. Which right should prevail in such a situation: the right to healthcare or the right to practice one's faith? Other conflicts may be less charged but still difficult to parse out. Is there a right to laser eye surgery? A right to breast implantation for cosmetic reasons? What about breast implantation following a mastectomy? Is there a right to the most effective therapy if it's much more expensive than a much cheaper but still adequate treatment? If healthcare were a right, who would determine who would get which medical services when? Bureaucrats? Legislators? The judiciary? Critics say that government is not the appropriate entity to be making these determinations.

Simply put, opponents say that construing healthcare as a right would do damage to the practice of medicine in the US. If we start from the premise that healthcare is a right, it then becomes incumbent upon the government to ensure its citizens receive healthcare under any and all circumstances. Yet the simple economic fact is that there are limited resources within the healthcare industry. In a time of high costs and advanced innovation, America cannot afford to provide each of its citizens every treatment all the time.

Opponents are concerned that the establishment of healthcare as a right guarantees that the government must insert itself even more aggressively into the healthcare sector. They say that anytime this happens, it is certain that competition and innovation will suffer as market forces are distorted. The challenges facing the US healthcare system are a result of too much government influence and regulation, rather than not enough.

Healthcare is important. But opponents say that defining it a "right," as attractive as that may sound at first blush, would accomplish the opposite of what proponents are after. Put simply, a right to healthcare would undermine both our rights and our healthcare.

Points for Consideration

A right to *health*

- The international declarations naming healthcare as a human right are mostly drawn from agreements indicating that “health” is a human right. This is far larger in scope, particularly when studies consistently indicate that environments, exposures, and behaviors constitute the majority of one’s health status. Perhaps the correct question should be: Is there a right to effective public health efforts teamed with appropriate medical services to ensure health? Proponents may enjoy this point of view, as it broadens the role of the public sector to provide or at least guarantee these services. After all, the public sector is currently the *de facto* guarantor or provider of the “rights” to sanitation, clean air, clean water, etc.
- Opponents may see the “right to health” as a yet another bridge too far. If everyone has a right to health, does that mean that government is on the hook for its citizens’ poor behavior choices, such as unbalanced diets, lack of exercising, or other activities usually seen as individual responsibility. These are more pernicious positive rights that further insert government into the lives and behavior choices of Americans.

The Emergency Medical Treatment and Labor Act (EMTALA)

- Strictly speaking, EMTALA does not establish a “right to healthcare” - it simply requires hospitals that accept Medicare to treat emergency victims. That’s not the same thing, though it may look so in practice.
- However, could EMTALA be modified or expanded in some way to establish a more comprehensive “right”?

Affordability and the right to healthcare

- Affordability and cost are issues largely left out of the discussions around a right to healthcare. This “right” must be paid for, either by individuals, employers, or society through tax revenues. Who should pay what, and in which order?

TheZetemaProject

- In the United States, costs “traditionally” fall first to the individual through deductibles and copays, next to the employer through insurance coverage (though employees generally contribute and economists claim that employer payments are a form of wages - not to mention the tax-preferred status employers receive for their contributions), and finally by society through government safety-net programs such as Medicaid.
- Other nations have a different order of operations, where society pays for a baseline of care and individuals may purchase above that.
- What is the intersection between rights and costs? What are the implications of a right costing money - and government being the final guarantor of that right? What level of hardship may be placed upon individuals without violating their rights?
- For example, a family with an income of \$75,000 and savings of \$50,000 could afford a life-saving procedure that costs \$60,000 without going bankrupt (by taking out a \$10,000 loan, for example), but it would be extremely difficult. Would requiring that family to pay the \$60,000 abridge their right to healthcare? If so, at what level of cost would the commitment to that right be fulfilled?

Does this debate matter outside of philosophical circles?

- Theory and praxis are two different beasts. Declaring a right to healthcare does not cause healthcare to materialize - or even necessarily advance the cause of expanding healthcare coverage. Does the whole discussion - negative rights, positive rights, ontology, epistemology - serve a useful purpose as questions of policy or even politics, or are they best left to philosophers and academics?