

Access to Healthcare as a Fundamental Right or Privilege?

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ABSTRACT

Right to health is a government obligation to provide its citizens with necessary medical services regardless of their ability to pay. The right to health requires the state to develop policies and action plans to achieve accessible health care. Ensuring access to healthcare services is an important social responsibility; because of its socio-economic nature, demand for it often carries not only individual but also social aspects that need to be considered and requires the consolidation of consumer funds. Peculiarities of the medical market such as health risk and uncertainty, incomplete information, limited competition, external effects, production of public goods, lead to special forms of economic relations in the medical market, which requires the development of appropriate regulatory mechanisms. In countries, where an individual's financial contribution to health care does not depend on his or her health risk, there is a principle of universal health care, which covers the entire population. Human is a higher social capital for whom health care is considered a right and not a privilege not only for humanistic and moral reasons, but also for rational, utilitarian approaches, as universal access benefits both the individual and society as it increases labor productivity.

Keywords: Healthcare; human rights; healthcare rights; universal healthcare (Siriraj Med J 2021; 73: 721-726)

The scope of the right to healthcare

Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. The international community must treat human rights on a global, equitable and equal basis. The state is responsible for protecting human rights, regardless of national identity.

After World War II, the international community adopted the Universal Declaration of Human Rights (1948). The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted by the United

Nations General Assembly in 1966. Rights fall into two categories: individual freedoms and population-based entitlements. Population-based entitlements require that the government allocate adequate funds for services, or mandate organizations to pay for services, for example, the right to education or to healthcare.

We must distinguish between the right to health and the right to health care. The right to health includes many determinants of health, such as income and social status, social support networks, education, working conditions, social and physical environments, individual health practices and coping skills, healthy child development, biology and genetic endowment, gender and culture. Thus,

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the right to health requires a much broader guarantee than the right to health care.

According to the Constitution of the World Health Organization, health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity; 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. In many countries of the world, according to the national constitution, the population has the right to guaranteed health care. Pope John XXIII in his encyclical, *Pacem in Terris* (Peace on Earth), explicitly stated that healthcare is a right rather than a privilege.

The right to health does not mean the right to be healthy, and that the governments of poor countries are obliged to create high-tech expensive medical services for which they do not have adequate resources. However, the right to health care requires the state to develop policies and action plans to achieve accessible health care. Health care, as a right, does not mean the provision of services by medical organizations in the form of charity, or the provision of absolutely all services by the state. The right to health care means that the state is obliged to do everything possible to provide the population with the necessary medical services, regardless of their solvency.

The right to health is assessed according to four criteria:

- 1) Existence. Public health and medical organizations, goods and services should be in sufficient quantity;
- 2) Accessibility: Medical organizations and health services should be accessible to all without any discrimination. Accessibility is assessed by 4 criteria: non-discrimination, physical accessibility, economic accessibility, access to information;
- 3) Acceptability: All medical organizations, goods and services must comply with the principles of medical ethics, take into account cultural characteristics, gender and age requirements, confidentiality.
- 4) Quality: Medical organizations, goods and services must be of adequate quality.

There are two approaches to the right to health care. One part advocates health care as a human right because healthcare is a human necessity. The second part opposes and believes that healthcare is one of the types of commodity and it can be supplied by the market.

A market can only be effective when the distribution of resources is based on solvency and not on the principle of equity. Health is not a marketable product. The law of supply and demand do not work in the medical market as health commodities has specific characteristics that make it different from marketable goods. These specific peculiarities are asymmetric information, uncertainty,

limited competition, production of public good and the externalities. Such a difference between the medical market and the normal market is due to the socio-economic nature of medical services. Such situations where the market is unable to allocate resources efficiently are called market failures. This specificity of the health sector leads to special forms of economic relations in the medical market, which requires the development of appropriate regulatory mechanisms. To achieve equal access to medical services, the government will develop a health policy based on the principle of equitable funding.

In European countries and Canada, health care is considered as a public service, the provision of which is the responsibility of the public sector and does not depend on individual income. The principle of universal healthcare operates in these countries. Universal coverage means not only protecting the population from financial risks, but also guaranteeing the provision of high quality medical services and ensuring a fair and equal right to health for all people. The right of access to health services for all promotes solidarity among them and is considered an important cornerstone of statehood. Healthcare funding is not based on actuarial principles, accordingly, person's financial contributions to health care do not depend on his or her health status or risk.

Health care is considered a fundamental human right not only for humanistic and moral reasons, but also because of rational, utilitarian approaches. Universal access benefits both the individual and the community as it provides an increase in workforce productivity.

Unlike many developed countries, health care in the USA is not considered a right or a constitutional principle. There is no legislative framework in the U.S. that provides for the right to health. There is a selective social protection system in the United States. It is based on population needs assessment procedures and involves the state covering only that part of the population who are socially vulnerable or need services more because of high risk.

The U.S. healthcare system reflects the peculiarities of the American socio-economic model, ideology, and traditions. In the first half of the nineteenth century, the French political scientist and historian Alexis de Tocqueville was the first to emphasize American exclusivity and uniqueness. "The condition of Americans is quite special, and it can be said that no other democratic people can ever achieve something like this". The principles of individualism and anti-statism have been firmly entrenched in American public consciousness. Recognition of individual rights hindered the development of social rights, as state interventions were often perceived as an obstacle to

the right to liberty. If the principles of equality, social protection and public solidarity have always prevailed in the development of social policy in European countries, in the US such a thing proved unacceptable for a certain part of the citizens. From their point of view, a person is responsible for his/her own destiny and actions, while the idea of transferring responsibility to the state does not enjoy much support. In the US, healthcare is not considered as the most important social function of the state, but as a service that, like other services, is sold in the medical market. However, according to polls, 65–86% of respondents in the US support access to health care should be a right.

Despite the annual increase in health care spending, there is still a problem with access to healthcare in the United States. Even the state program such as Medicare, which covers high risk people of retirement age and with disabilities, requires patients to share significant costs, so-called Co-payments. Because of this, about half of healthcare costs are borne by the insured themselves, which places a heavy burden on them. As of 2018, the number of uninsured in the US is 11% (30 million people). In addition, there are so-called insufficiently insured people who have health insurance but spend 10% or more of their income out of pocket out of medical expenses. The number of people with insufficient insurance is 29 million. In contrast to the US, other developed countries have universal medical coverage which covers medical services for the population at much lower costs. Child mortality and life expectancy in the US lag significantly behind those of other developed countries.”

Nevertheless, the right to health care in the USA is not a radical concept. This is evidenced by the state programs “medicare” and “medicaid”, as well as the program of medical care for war veterans, which treats health care as a right. However, in the US, the state is not obliged to provide healthcare to all its citizens.

Ensuring the right to health care requires large investment resources. Various funding mechanisms are used to achieve universal health care goals, namely the social security model (Bismarck model) and the tax-based model (Beveridge model). Social insurance was first introduced in Germany in 1883. Employees and employers are required to pay social security contributions at hospital box offices. Bismarck’s model of social insurance is based on the principles of federalism and decentralization of powers. Federal governing bodies define the institutional model and guidelines, the parties have residual legislative powers, and the regional institutions exercise legal oversight over local health structures. Despite universal health care, there is no state monopoly on funding, in particular, hospital

cash registers (Kranken Kassen) and regional disease funds are public rather than governmental institutions. The state establishes a basic package of medical services. Social insurance funds have different insurance premiums, which are calculated on the basis of income and are co-financed by employers and employees. Despite this, the role of the private sector in the delivery of medical services is important. Social security systems have been introduced in many Western European countries. In addition to social security contributions,

Philosophical aspects of access to health care

It is interesting to discuss the issue - access to healthcare is a human right or a privilege - from a philosophical point of view. According to the Greek philosopher Aristotle (384-322 BC), everything that is alive has a soul. The soul is the life-giving force and is responsible for the development of all living things. The soul cannot grow by itself, by its own forces. Its development requires the efforts of both the individual and society as a whole. Aristotle believed that humanity could not be better if man existed only by himself, on his own, and was not cared for by social mechanisms. The same can be said of human health, which cannot be achieved by itself, on its own. Public efforts are essential for human health.

Thomas Hobbes (1588-1679) in his work - “Leviathan” presents “right by nature” (jus naturales) and “law by nature” (lex naturalis). “The natural right is the freedom of man to use his power as he wishes, to sustain his life, and therefore to do whatever he thinks is the best way to achieve this goal”. Unlike “right by nature”, the “law of nature,” or the mind, allows a person to figure out what must be done to sustain life. When people have the freedom to “do what they want, everyone is at war with each other”. The law of nature requires each of us to relinquish our right to renounce freedom and thus give more freedom to other people. With this concession people think that others will have the same kindness towards them and they will also give up their freedom. When a person relinquishes freedom or transfers any right to another, “he does so because he himself receives equal rights. The motive and purpose of the waiver or transfer of the right is nothing but the personal security of the person in terms of being able to protect his life”.

“Obligation” is created by “denial of a natural right”. “Natural right” does not require obligations from a person. In the natural state, everyone is self-reliant and a person can do everything that suits his interests. By denying the “natural right”, all members of society pledge to each other to coexist peacefully and thus ensure each other’s security. When people renounce a “natural right”

or transfer it to another, a contract or agreement arises. The transition from “natural right” to “natural law” takes the form of a public contract: people agree to obey the law, because the alternative is a state of total war. If we consider the Hobbes concept in relation to health, for a safe life, people transfer the “right” to access medical care to a society in which all members pledge to cooperate. That is, society agrees that healthcare is a right and it should be accessible to all.

The American publicist Thomas Paine (1737-1809) distinguishes natural rights and civil rights. Natural rights belong to man by the force of his existence (freedom of belief, right to expression, striving for happiness ...), while civil rights belong to man as long as he is a member of society. Civil rights are guaranteed by society. They cannot be fully implemented without the help of the community.

Civil rights arose from natural rights. Man alone cannot ensure security. Ensuring collective security is handed over to the state. Civil power should not be used to suppress the natural rights of individuals. Human rights include the rights of other human beings, the protection of which is incumbent on this person.

Thus, access to health is considered a matter of both personal and national security. In modern society, all people transfer their natural rights to the state, thus creating a capital of collective security. Every person has a safety and benefit from common well-being, as well as the right to access health.

According to Hannah Arendt (1906-1975), and her work “The Human Condition” (1958), people reached an agreement on common welfare and handed over their natural rights to the state for their collective security. People, in addition to being equal, are different from each other. People differ from each other in word (what they say) and action (what initiative they take). Some people become better known for their words, while others become richer by their actions. Such diversity between people creates “difference”, but it does not change equality. People differ in height, weight, ethnicity, income, gender, age, or religion. They have distinctive features and individual places in the world, but they are all equal. People make their own contribution to the development of society. In this public space where the rule of law prevails, people coexist, they interact with each other through words and actions, thus wanting to register themselves in society. Different segments of the population have different needs for medical care. The poor and the elderly tend to need medical care more. The united efforts of the people, solidarity, are needed to eliminate the problem of access to medical services

arising from this difference. “For man, the reality of the world is guaranteed by the existence of others.”

John Rawls (1921-2002) paid special attention to access to health for all in his book “Theory of Justice” (1971). According to Rawls’s social justice argument, health care is a right because, (1) it promotes equality of opportunity and benefits the least well-off members of society; And (2) from a utilitarian point of view, guaranteed medical care increases the well-being of more people.

Norman Daniels, based on the principle of John Rawls, gave us the rationale for universal health care. John Rawls believes that every person has the right to inviolability (protection of physical and mental condition, right to life, right to privacy ...), which is based on justice. Therefore, the rights secured by the judiciary in a just society are not subject to political bargaining.

CONCLUSION

People are socially valuable entities that, through the power of morality, have made implicit agreements with each other as well as with the state. Through natural rights, we protect our own individuality, and also those to whom we collectively transmit common good. Under natural laws and natural rights, access to health for human beings is a right and not a privilege. The health status of the population depends on the social structure of a particular country, state policy and national culture. In rich countries, the average life expectancy of people is high. However, the health of the population depends not only on the country’s economy, but also on the distribution of wealth. The more the state invests in healthcare, the higher the health rates. The problem of health inequality in different groups of the population must be addressed by correcting economic inequality. Health care reform should focus not only on the provision of medical services, but also on access to health care for the entire population. Thus, state policy plays a major role in improving the health of the population. The health care system should be arranged in such a way that the welfare of the patient is paramount for him. Every health care system must guarantee accessibility to healthcare for the entire population and must protect it from catastrophic health care costs. Every citizen should have access to high quality medical services. Good health benefits all: the individual and the community, and the well-being of the country in general. Health is a determinant of human productivity. The healthier a person is, the more able-bodied he is. Improving health promotes the acquisition of knowledge, the development of learning skills and creativity. Healthy and educated workers respond more

easily to technological and innovative processes, which is the determining factor for the successful implementation of reforms. Thus, human health contributes to the growth of the economy as it increases the able-bodied population.

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