The Human Right to Health Care in the State of Vermont

From the abolition of slavery to the recognition of same-sex unions, Vermont has been a leader on human rights for centuries. Vermont is now leading the way again by recognizing health care as a basic human right for all Vermonters. In 2010 and 2011, the Vermont legislature passed historic health care legislation that incorporates human rights principles derived from international law and paves the way for universal health care in the state of Vermont. This article outlines the human right to health care guaranteed in international law, explains how human rights principles are incorporated into the recently passed legislation, and examines the potential impacts this legislation may have at the state and national levels.

What is the Human Right to Health Care?

The United States played a pivotal role in the creation of the United Nations and the drafting of the Universal Declaration of Human Rights. But it has often lagged behind other nations in recognizing human rights, including the right to health care, in its own domestic context. In 1943, President Franklin Delano Roosevelt included the “right to adequate medical care and the opportunity to achieve and enjoy good health” in his proposal for a “Second Bill of Rights.” The United Nations Commission on Human Rights, chaired by Eleanor Roosevelt, later enshrined the right to health in the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in 1948 and applies to all member nations including the United States.

Article 25 of the Universal Declaration of Human Rights declares that “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.” The right to health is also recognized in a number of other international instruments, including the Constitution of the World Health Organization (WHO) of which the United States is a member, and the Convention on the Elimination of All Forms of Racial Discrimination, which the United States Senate ratified in 1994. The WHO Constitution states that 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” and goes on to declare that “governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.”

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the United States signed in 1977 but has not yet ratified, also recognizes a right to the “enjoyment of the highest attainable standard of physical and mental health.” The right to health is not limited to the right to receive medical treatment. It can be understood as the right to a health system encompassing health care and the underlying determinants of health including adequate food, safe housing and sanitation, healthy work and environmental conditions and access to health-related information and education. However, this article focuses specifically on the human right to health care.

The Covenant requires governments to progressively realize the right to health, as well as other economic and social rights. This means that the Covenant recognizes that governments may be constrained due to limited resources from immediately implementing all aspects of the right to health. Nonetheless, governments must take a series of affirmative steps that will over time lead to the full enjoyment of the right to health as quickly as possible. The United States has not yet ratified the ICESCR, however, as a signatory it “is obliged to refrain from acts which would defeat the object and purpose” of the treaty. Additionally, as a member of the United Nations, the United States is required to report on its progress on human rights, including economic, social, and cultural rights, to the United Nations Human Rights Council every four years. Further, the United States is subject to the worldwide mandate of the Special Rapporteur on the Right to Health appointed by the United Nations Human Rights Council. The Special Rapporteur investigates and presents annual reports to the United Nations on implementation of the right to health and has incorporated the work of the United Nations Committee on Economic, Social and Cultural Rights to define the content of that right.

The Committee on Economic, Social and Cultural Rights, responsible for monitoring implementation of the ICESCR and through country reports and a General Comment has defined the right to health. Under international law, governments have the responsibility to respect, protect, and fulfill the right to health. First, governments must respect the right to health by refraining from direct violations of the right to health, such as preventing dissemination of health information or putting up roadblocks preventing access to hospitals. Second, they must protect the right to health by protecting individuals from third-party violations by, for example, regulating hospitals, health professionals, and pharmaceuticals. Finally, governments must fulfill the right to health by taking affirmative steps to move towards realizing the right to health, such as providing health services.

The Committee has identified four elements necessary to achieving the right to health: availability, accessibility, acceptability, and quality. According to the Committee, governments must make health facilities, goods, and services available to all in their territory. They must also make health care accessible by eliminating physical and economic barriers and preventing discrimination in the provision of health care services. Acceptability is the principle that health care should follow ethical guidelines and be culturally appropriate. Quality is the principle that governments have a duty to ensure that health care services are safe, effective, and efficient.

In addition to the four substantive elements, the Committee has also identified four procedural protections: non-discrimination, participation, access to remedies, and information. According to the Committee, governments must ensure that there is no discrimination in the provision of health care and ensure that people have an opportunity to participate in decisions regarding their own health care as well as on health care policy. Governments must also provide adequate information on medical services and public health to make participation meaningful and provide avenues for people to hold decision makers accountable.
The Right to Health in Vermont

Although some state constitutions address public health or public health care for the poor, the Vermont State Constitution does not.27 However, the Vermont legislature has recognized the importance of health care in the past by enacting legislation aimed at expanding access to health care through programs such as Dr. Dynasaur and Catamount Health. These efforts have resulted in a health care system that is excellent in comparison to most other states.30

Nonetheless, costs continue to spiral upwards and thousands of Vermonters are unable to access affordable health care. In 2008, Vermonters spent over 4.4 billion dollars on health care but more than 66,000 Vermonters, including 11,000 children, were uninsured.31 In addition, in 2008, 15.7% of Vermonters were underinsured meaning they could not use their insurance effectively due to unaffordable deductibles, co-payments, and other out-of-pocket expenses.32

Although state-sponsored programs such as Catamount Health have expanded access to health insurance coverage, there are many barriers to enrollment, such as the requirement that a person be uninsured for twelve months before being eligible, the high cost of monthly premiums for Vermonters who do not qualify for premium assistance, and a clause allowing insurance companies to refuse to cover pre-existing conditions for twelve months.33

Over the past decade, a number of organizations have attempted to address the burgeoning health care crisis with some success.34 The Vermont Workers’ Center, however, is the only organization in Vermont that has adopted a human rights framework as the basis of its advocacy efforts. The Center, which launched its “Healthcare is a Human Right Campaign” in 2008, asserts that every Vermont resident is entitled to comprehensive, quality health care; that systemic barriers must not prevent people from accessing necessary health care; that the health care system must be transparent in design, efficient in operation, and accountable to the people it serves; and that it is the responsibility of the government to ensure a health care system that satisfies these human rights principles.35 In short, the Center uses a human rights framework that is inspired by the right to health as it is defined in international law.36

Based on this human rights framework, the Center has successfully mobilized thousands of Vermonters to demand universal health and ensure that human rights principles are incorporated into health care reform legislation adopted by the Vermont legislature. In 2010, the Vermont legisla-

ture enacted Act 128, which adopts human rights principles as the basis for health care reform in Vermont, and in 2011, the Vermont legislature enacted H.202/S.57, which incorporates the Act 128 human rights principles and creates a framework for a system of single-payer health insurance in Vermont.

Act 128: An act relating to health care financing and universal access to health care in Vermont

Act 128 was enacted into law on May 27, 2010. It created a roadmap for designing and implementing a universal health care system. The Act does not explicitly state that health care is a human right but rather states that health care is a public good for all Vermonters.35 The Act also encompasses the key international human rights principles necessary to achieve the right to health.36

The Act states that it is the policy of the State of Vermont to ensure universal access to healthcare and that systemic barriers must not prevent people from accessing healthcare.37 The Act also states that any healthcare plan must be transparent in design, efficient in operation, and accountable to the people it serves.38 The Act makes it the responsibility of the State to ensure that Vermonters are able to participate in the design, implementation, and accountability mechanisms of the health care system and establishes that it is the government’s responsibility to ensure that the healthcare system satisfies all these principles.39

Act 128 established a health care commission responsible for hiring an independent consultant to design three universal health care plans that each satisfy the human rights principles.40 The Vermont Health Care Commission selected Dr. William Hsiao of Harvard University and his team of consultants to design the three health care plans,41 and in February 2011, Dr. Hsiao presented his findings to the Vermont legislature. He recommended that Vermont adopt a “public/private” single-payer health care system with a standard benefits package and a uniform system of payment.42

H. 202/S.57

In May 2011, H. 202 was enacted into law. This legislation incorporates many of Dr. Hsiao’s recommendations for reforming Vermont’s health care system and incorporates Act 128’s human rights principles.43 H. 202 creates a framework for implementing a comprehensive, publicly-financed universal health care system known

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as Green Mountain Care.\textsuperscript{44} The Act establishes a Green Mountain Care board that will be responsible for overseeing the development and implementation of the new plan.\textsuperscript{45} The first step in the implementation process will be the establishment of a health benefits exchange as required under the federal Patient Protection and Affordable Care Act.\textsuperscript{46} Beginning in 2014, Vermonters would use this exchange to purchase private health insurance policies.\textsuperscript{47}

Under the federal health reform legislation passed in March 2010, states may begin operating alternative programs in lieu of the federal program in the year 2017.\textsuperscript{48} In 2017, Vermont will seek a federal waiver to transform the health benefit exchange into the universal health care system known as Green Mountain Care.\textsuperscript{49} All Vermont residents will be eligible for Green Mountain Care which will provide comprehensive, affordable, publicly-financed health care coverage for all Vermont residents as a public good.\textsuperscript{50} The common benefits package and the financing mechanism have not yet been determined.\textsuperscript{51}

**The Potential Impact of H. 202**

The creation of a universal health care system based on human rights principles would have a profound effect on the lives of Vermonters. According to a survey conducted by the Vermont Workers’ Center in 2008, over 60% of Vermonters surveyed reported foregoing health care in the previous year because they did not believe they could afford it.\textsuperscript{52} If Vermont succeeds in establishing a universal health care system, all residents would have access to comprehensive medical care regardless of their age, employment status or ability to pay. The health care crisis has been linked to a variety of other problems including bankruptcy and homelessness due to medical debt. Therefore, establishing a universal health care system would address these problems as well.\textsuperscript{53}

In addition to improving the quality of life for Vermonters, universal health care might also cost less than the current health care system. While most states have experienced increasing health care costs, Vermont’s health care costs are higher than the national average and rising at a faster rate.\textsuperscript{54} For example, between 2000 and 2007, health insurance costs for working families rose 75% while incomes rose only 20%.\textsuperscript{55}

In a presentation to members of the Vermont Health Care Commission, Dr. Hsiao asserted that the fragmentation of the Vermont health care system is responsible for spiraling costs, waste, fraud, and inconsistent care.\textsuperscript{56} In his report to the legislature, Dr. Hsiao predicted that a publicly financed system could save the state 1.6 billion dollars by 2024.\textsuperscript{57} A new study, using more conservative accounting methodology to analyze H. 202, still concluded that the legislation would save the state hundreds of millions of dollars.\textsuperscript{58}

The creation of a universal health care system in Vermont might impact other states as well. United States Senator Bernard Sanders has argued that a successful universal health care program in Vermont can serve as a template for other states.\textsuperscript{59} Canada’s universal health care system began in the province of Saskatchewan and was eventually implemented in the rest of the country.\textsuperscript{60} Vermont now has an opportunity to demonstrate to other states the benefits of a universal health care system based on human rights principles.

H. 202 may also have an impact on the way Americans think about human rights, especially economic, social, and cultural rights in a domestic context.\textsuperscript{61} Human rights activists have often observed that Americans tend to view human rights as being relevant only in the developing world.\textsuperscript{62} State and local action on human rights can help to educate the public about human rights and demonstrate how human rights, especially economic, social, and cultural rights are relevant in the United States.\textsuperscript{63} In addition, human rights principles provide alternative approaches to defining inequality and discrimination and new tools to address these problems.\textsuperscript{64}

State and local action on human rights may also provide support for ratifying human rights treaties at the national level. One reason that many human rights treaties have not been ratified at the national level is the fear that international human rights law would undermine federal and state sovereignty.\textsuperscript{65} Many argue that national ratification would force state and local governments to comply with international principles even when those principles conflict with American values.\textsuperscript{66} When states and local communities take action on human rights, it demonstrates that Americans believe in and benefit from human rights.\textsuperscript{67} A groundswell of human rights activity at the local level may therefore serve to legitimize human rights at the national level.\textsuperscript{68}

With the passage of H. 202, Vermonters have begun the transition to a universal health care system that is premised on health care as a human right for all. While the establishment of a universal health care system is not yet certain, the success of the “Healthcare is a Human Right” Campaign and the passage of H. 202 demonstrate that international human rights principles can and do have a role in domestic policy discussions regardless of whether they have been recognized in law at the federal level.

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\textsuperscript{3} Id. at 346.


\textsuperscript{5} Id.


\textsuperscript{7} International Convention on Economic, Social


Id. ¶ 11(30).

Id.

Id.


Gallagher, supra note 8 ¶ II(33).

Id. ¶ II(34).

Id. ¶ II(35).

Id. ¶ II(36).

Id. ¶ II(37).

Id.

Id.

Id.

Id. ¶ II(38)(43), IV(54), (59).

Id. ¶ II(43), IV(54).

Id. ¶ II(54), (59).


Hsiao, supra note 28 at 4.


See Mariel McBride, Using Human Rights to Move Beyond the Politically Possible, 44 Clearinghouse Rev. 459 (2011) (describing the “Health Care is a Human Right” campaign in detail).

Act 128, supra note 1, at ¶ 90431(a).

Id. ¶ 2.

Id.

Id.

Id.

Id. ¶ 901.


Hsiao, supra note 28, at 127.

Act 48, supra note 1, at ¶ 1(a), 9371.

Id. ¶ 11.

Id. ¶ 9375.

Id. ¶ 1801(b).

Id. at ¶ 1803(b)(1)(a).


Act 48, supra note 1, at ¶ 1822(Bb).

Id. ¶ 1(a).


Id. at 20, 22, 24.


Hsiao, supra note 28, at 163.


A human rights framework is used in a variety of domestic policy areas including housing, welfare, and social security. See, e.g., Maria Fossarini, Brid Paul, Bruce Foster & Andrea Scherer, The Human Right to Housing: Making the Case in U.S. Advocacy, 38 Clearinghouse Rev. 97 (2004), Maria Fossarini & Erica Tera, Housing Rights and Wrongs: The United States and the Right to Housing, in 3 Bonding Human Rights Home: Portraits of the Movement 149 (Soohoo et al. eds., 2008); Wendy Pollock, The Right to Social Security in the United States: Ending Welfare as We Know It, in 3 Bonding Human Rights Home: Portraits of the Movement 229 (Soohoo et al. eds., 2008).


Id. ¶ 2.

Id. at 410.

Id.


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