



Ministry of the Attorney General
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Toronto, Ontario M7A 2S9

VIA EMAIL

Email: cloc.reception@ontario.ca

7 April 2023

To the Ministry of the Attorney General,

RE: Cancellation of Physician and Hospital Services for Uninsured Persons Program

Our organizations have been approached by a number of healthcare provider organizations, as well as directly affected patients, who have raised serious concerns with the Ministry of Health's recently announced cancellation of the Physician and Hospital Services for Uninsured Persons program ('PHSUP').

To the best of our knowledge, the cancellation of PHSUP was announced to organizations representing healthcare providers on March 24, 2023, with an effective date of March 31, 2023. We are unaware of any consultation with healthcare providers having taken place to ensure orderly, safe and fair ongoing care for the thousands of Ontarians who have come to rely on the PHSUP for essential medical treatment. It is our view that the abrupt cancellation of the program is dangerous and unfair, and violates the Canadian Charter of Rights and Freedoms and Ontario's international and domestic legal obligations.

We write to advise you and your client of these concerns and of the possibility that relief may be sought through the Superior Court of Justice. Any changes to the PHSUP must be canceled or at minimum delayed. The Government must meaningfully consult with healthcare providers, hospitals, health professions organizations, and affected persons to properly assess the consequences of this action and to ensure that any changes to the program safeguard the lives and health and respect the constitutionally protected rights of uninsured people.

Who is Affected by the Cancellation of the PHSUP

The PHSUP provides access to essential healthcare for those who are uninsured. It also reduces barriers to treatment for those who are insured but would otherwise be unable to access medical services. Groups which have persistently and historically been excluded

from Ontario Health Insurance Plan ('OHIP') coverage include irregular or undocumented migrants, migrant workers (those working part-time or between contracts), and international students. New or returning Ontario residents also faced a period of exclusion from OHIP.

Undocumented people are not eligible for social assistance, employment insurance, Old Age Security or Canada Pension Plan benefits. They have no choice but to work, often in dangerous, low-paying yet socially necessary jobs where they are vulnerable to exploitation by employers. This is a group which is disproportionately Black and racialized.

We note that Immigration, Refugees and Citizenship Canada ('IRCC') has been mandated to develop a program for the regularization of people without immigration status.¹ Consultations for this program are well underway and while the final scope of this program is yet to be determined, it appears likely that a significant number of the undocumented or precarious migrants in Ontario will obtain status in the coming months and years. Subjecting future permanent residents and Canadian citizens to lapses in their healthcare coverage is arbitrary, discriminatory and unconstitutional.

The PHSUP also removed barriers to care for people who were insured, or were otherwise eligible for OHIP, but struggled to access services. This includes unhoused people who have had their identification lost or stolen, victims of domestic violence and others fleeing home with no belongings, people with mental health conditions (including substance use disorders) and other disabilities facing challenges navigating bureaucratic systems, other people with disabilities that pose barriers to obtaining or renewing their OHIP cards, and elderly people who struggle to meet their basic needs. PHSUP ensures that these vulnerable groups can access timely and necessary healthcare without bureaucratic delay or fear of being denied service.

How are people affected by the Cancellation of the PHSUP

We have received evidence of healthcare providers receiving fee-for-service price charts for various services that were previously covered under PHSUP, and administration demanding payment of fees from uninsured patients in advance. This included, through Trillium Health, \$6,000 in advance for delivery of a baby, with an additional \$1,500.00 for an epidural or for anesthesia for a C-section. At one Unity Health location, there is a charge of \$350 for an ultrasound which would be required to detect an ectopic pregnancy. These are medically necessary and potentially life-saving procedures. The obstetrics price charts that we received recommend that pregnant women bring up to \$4,000 when attending hospital to deliver their babies.

It is unreasonable to expect that already-marginalized people will have the resources to pay for appointments, treatments, tests, procedures and medications in advance. Those who do receive healthcare without advance payment still risk being burdened by crushing medical

¹ Immigration, Refugees and Citizenship Canada, CIMM – Undocumented Migrants – November 18, 2022, Government of Canada, accessed March 30, 2023, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-nov-18-2022/undocumented-migrants.html>

debt when they are subsequently billed for their care. Others will go untreated until their conditions deteriorate to the point of requiring emergency room visits and hospitalization, risking irreversible decline in their health and well-being. Some will die from preventable medical causes.

The abrupt cancellation of PHSUP will not only prevent uninsured people from receiving essential healthcare in the future. It will also jeopardize the lives and health of people who are in the midst of receiving treatment. We have heard from an undocumented worker who was able to access care under PHSUP and, as a result, was able to detect colon cancer. He was scheduled to start chemotherapy imminently due to the advanced stage of disease, but was advised that this treatment will no longer be available to him through PHSUP. He will die without this treatment. We have also heard from healthcare providers about patients currently on dialysis who, as of March 31, will have to discontinue treatment. They have had no opportunity to make alternative arrangements. These are hospital-based services not services provided or paid for by community health centres. As a result of the government's cancellation of PHSUP the lives and health of these and many other vulnerable patients are being put at risk.

Another area of concern is treatment for people who use drugs, for whom consistency, established routines and ongoing support (both psychological and pharmaceutical) are necessary to harm reduction and maintaining control over substance use disorders. For patients who have been receiving treatment through PHSUP, the abrupt cancellation of the program with no contingency plan will compromise treatment they have received thus far, and will significantly increase the risk of relapse and overdose death.

Cancelling the PHSUP is at Odds with Recent International and Ontario Superior Court Jurisprudence

Recent jurisprudence regarding Canadian governments' obligations under international human rights law are directly relevant to the constitutionality of the cancellation of the PSHUP. In 2018, the United Nations Human Rights Committee ('UNHRC') released its decision (its 'Views') in the case of Nell Toussaint, a woman living in Canada with irregular immigration status who was denied essential health care which led to serious and irreversible health consequences. The UNHRC found that, as a party to the International Covenant on Civil and Political Rights ('ICCPR'), Canada violated Ms. Toussaint's rights to life and non-discrimination guaranteed under articles 6 and 26 of the ICCPR. As a result, the UNHRC held that Canada must ensure that irregular migrants have access to essential healthcare where their lives are at risk.²

Ms. Toussaint subsequently commenced a civil action against the Government of Canada, challenging its refusal to implement the Views of the UNHRC, and its failure to ensure access to essential health care for irregular migrants. In his 2022 decision in *Toussaint v Canada*, Ontario Superior Court Justice Perell found that Ms. Toussaint's challenge disclosed a justiciable cause of action and should not be struck.³ In coming to his decision,

² [Toussaint v. Canada](#) CCPR/C/123/D/2348/2014 (30 August 2018).

³ [Toussaint v. Canada \(Attorney General\)](#), 2022 ONSC 4747 at para. 206.

Justice Perell criticized the government's argument for denying publicly funded health care to irregular migrants, as one that "reeks of [a] prejudicial stereotype that immigrants come to milk the welfare system."⁴

Illegality of Cancellation of PHSUP

In light of current Supreme Court of Canada jurisprudence on the scope of sections 7, 12 and 15 of the Charter, as well as the findings of the UNHRC and the Ontario Superior Court of Justice in *Toussaint v Canada*, our view is that the cancellation of the PHSUP program is unconstitutional.

Access to essential health care under the program was discontinued with minimal notice, no transitional process, no consideration of health impacts, and no justification. The Government's failure to ensure meaningful consultation with those affected violates the sections 7, and 12 and 15 rights of individuals already receiving and relying upon essential healthcare provided by the PHSUP. Furthermore, the denial of life-saving healthcare for uninsured persons facing a demonstrable risk to life, in and of itself, infringes sections 7, 12 and 15 of the Charter. It is also incompatible with Canada's and, in turn, Ontario's obligations under international human rights law, which the Supreme Court of Canada has repeatedly emphasized are critical in interpreting Charter rights.

In short, by putting the lives and health of vulnerable groups at direct risk, the Government is failing to meet its constitutional obligations. We submit that any changes to eligibility for essential health care must be suspended. No change to the PHSUP can be made without meaningful consultation with health care providers, health professions organizations, hospitals, community groups, and affected people pursuant to the Government's obligations to respect life, security of the person, fundamental justice and equality under the Charter.

Conclusion

There is no justification for cancelling the PHSUP with virtually no notice, and without regard for the impact this will have on people currently relying on that program for essential medical treatment. This decision violates the Charter and Ontario's obligations under international law. The decision to cancel the PHSUP effective March 31, 2023, must be reversed immediately and the Government must ensure that any future decision to cancel or limit the program is safe, fair and legal.

Sincerely,

Neighbourhood Legal Services
Amnesty International Canadian Section (English Speaking)
Canadian Civil Liberties Association
FCJ Refugee Centre
Canadian Health Coalition
Centre for Gender & Sexual Health Equity

⁴ [Toussaint v. Canada \(Attorney General\)](#), 2022 ONSC 4747 at para. 134.

Willowdale Community Legal Services
South Asian Legal Clinic of Ontario
Income Security Advocacy Centre
Charter Committee on Poverty Issues
Chinese and Southeast Asian Legal Clinic
Downtown Legal Services
Waterloo Region Community Legal Services
Mississauga Community Legal Services
Legal Assistance of Windsor
Landlord's Self-Help Centre
Justice for Children and Youth
Parkdale Community Legal Services
ARCH Disability Law Centre

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