

Ensuring Equitable Access to OHIP Registration for Newborns

Lauren Bates & Rebecca Cheff

Wellesley Institute works in research and policy to improve health and health equity in the GTA through action on the social determinants of health.

Written by Lauren Bates & Rebecca Cheff

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Statement on Acknowledgement of Traditional Land

We would like to acknowledge this sacred land on which the Wellesley Institute operates. It has been a site of human activity for 15,000 years. This land is the territory of the Huron-Wendat and Petun First Nations, the Seneca, and most recently, the Mississaugas of the Credit River. The territory was the subject of the Dish With One Spoon Wampum Belt Covenant, an agreement between the Iroquois Confederacy and Confederacy of the Ojibwe and allied nations to peaceably share and care for the resources around the Great Lakes.

Today, the meeting place of Toronto is still the home to many Indigenous people from across Turtle Island and we are grateful to have the opportunity to work in the community, on this territory.

Revised by the Elders Circle (Council of Aboriginal Initiatives) on November 6, 2014

10 Alcorn Ave, Suite 300
Toronto, ON, Canada M4V 3B2
416.972.1010
contact@wellesleyinstitute.com



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Introduction

Universal public health care coverage is intended to ensure Canadians have access to the health care necessary to stay healthy and address illness. For newborns this includes important screenings, vaccinations, well-baby check ups, and more intensive care when needed.¹ We take for granted that Ontario-born newborns should and do have efficient access to registration and therefore access to publicly funded health coverage under the Ontario Health Insurance Plan (OHIP).

However, some parents who are themselves ineligible for OHIP have difficulty registering their newborns for OHIP. In the spring of 2017, members of the Health Network on Uninsured Clients² raised concerns about the possibility of an emerging pattern of denials by hospitals of OHIP infant registration forms to the newborns of uninsured parents in Toronto. While these parents may not have OHIP for a range of reasons, including a lack of legal status, the three-month wait, and temporary residency status, their newborns are Canadian citizens by birth, except in very rare circumstances.

In response to these concerns, Wellesley Institute undertook a project to examine this issue. We reviewed Ontario law and policy related to OHIP eligibility for newborns, spoke with midwives and Community Health Centre staff whose clients had encountered these issues, and consulted with staff at birthing hospitals. Specifically, we consulted with staff from 4 birthing hospitals in Toronto, and in a range of positions, including ethicists, social workers, and birthing unit staff.

The companion think piece, “Using the Law to Advance Health Equity: OHIP Eligibility of Ontario-Born Babies of Uninsured Parents”, reviews the relevant laws regarding OHIP eligibility for newborns and outlines the legal framework in this area in more detail. This paper summarizes the complex context surrounding this challenge and identifies opportunities for improvements. It is intended to support discussions among key stakeholders towards ensuring equitable access to timely OHIP registration for all eligible Ontario newborns. There is a need to ensure that all eligible newborns are registered for OHIP in a streamlined and barrier-free way.

Background: Considering the Unique Needs of Uninsured & Non-status Families

In the cases brought forward by the Uninsured Network, mothers themselves did not have OHIP. Families may find themselves without OHIP coverage for a variety of reasons. Some have lost their identification. Some, such as visitors and international students, may be living in Ontario with temporary status. New permanent residents and returning Canadians may be

in the three-month wait period for OHIP eligibility. Lastly, some residents will be without any formal or settled legal status in Canada.

These latter residents are among those most likely to be affected by this issue. In Canada, most non-status individuals who are living and making Ontario their home are likely to have entered the country through authorized temporary resident channels and to have since lost their status through denied or pending refugee claims; expired work, student or visitor visas; or work permit or family sponsorship breakdown. Opportunities to regain status and become permanent residents are often limited.³

While there is no accurate figure of the number of non-status or uninsured residents in Ontario, nor the number of newborns impacted by this, we can expect that this is a more prevalent issue in the Greater Toronto Area where a significant number of undocumented and uninsured Ontarians appear to reside.^{4,5} Indeed, new research has specifically highlighted the health care needs of uninsured pregnant women in Toronto.^{6,7}

Throughout this project, community health centre staff emphasized that non-status mothers are likely to be significantly affected by fear and vulnerability when navigating the infant OHIP registration process due to their precarious legal status:

“The women are so vulnerable and scared of being found out.”

“The nurses made her feel shameful for being non-insured herself and she was worried the authorities would be called even though they were not.”

In addition, some of these parents and families may have limited English proficiency. These challenges may be compounded by a lack of information and familiarity with navigating the complex health care and legal systems, and a lack of knowledge about their legal rights and eligibility of newborns in Ontario.

These barriers that uninsured and non-status families likely face highlight the need for clear and accessible in-hospital registration processes for all eligible newborns. It is important to consider the unique needs of this population when developing solutions.

Requirements for Newborn Registration in the Ontario Health Insurance Program

The Law on Newborn Entitlements to OHIP Coverage

The legal framework for OHIP eligibility is detailed at length in the companion think piece “Using the Law to Advance Health Equity: OHIP Eligibility of Ontario-Born Babies of Uninsured Parents”, and so is only briefly summarized here.

The central legal concept in determining eligibility for OHIP is “residency.” This is a complex legal concept, involving multiple requirements and processes. As one of those requirements, most individuals new to Ontario must wait three months to apply for OHIP coverage as a means of demonstrating residency. However, newborns are understandably exempt from the three-month wait. Newborns are eligible for coverage from the date of their birth if they meet the requirements to be a resident.

Prior to 2009, newborns of parents who were OHIP ineligible (i.e. uninsured) could not themselves be exempted from the three-month wait. Eligibility was broadened in 2009, and now the requirements for newborns are:⁸

1. Newborns must have an eligible status. Except in the rare case of foreign diplomats, all infants born in Ontario are citizens from birth, and so meet this test.⁹
2. The “primary place of residence” of the person who has lawful custody of the child must be Ontario. The primary place of residence is the place where the person has the greatest connection in terms of present and anticipated future living arrangements, activities of daily living, family connections, financial connections and social connections.¹⁰

This second requirement is a nuanced test. By emphasizing connection and residency, the primary place of residency requirement clearly excludes birth tourism (i.e. families that come to Ontario for the sole purpose of delivering their baby and do not plan to stay). However, babies born to parents who do not have legal status in Ontario but have settled here could certainly meet this test. Despite the lack of legal status, the family may clearly have a strong connection with Ontario, as demonstrated by residency over time, social or employment connections, or other aspects of community engagement. This was explored in detail in the accompanying think piece.

Continued eligibility requires presence in Ontario for at least 153 days in any given 12-month period.¹¹ Where OHIP coverage is denied, an appeal can be made to the Health Services Appeal and Review Board (HSARB), an administrative tribunal.¹²

The Hospital Infant OHIP Registration Process

In general, to register for public health care coverage in Ontario, an individual must apply in person at a ServiceOntario centre. They must provide proof of residency in Ontario, in the form of documents from a list provided by ServiceOntario, such as an Ontario driver’s license, school transcript, or lease agreement.¹³

There is, however, a different OHIP registration process for babies who are born in an Ontario hospital or with a registered midwife. Because almost all newborns will be eligible for OHIP, the standard in-person process at ServiceOntario centres would be unnecessarily cumbersome, as well as burdensome to new parents who are adjusting to an exhausting life change. The special Infant Registration Process ensures that health numbers are assigned

to newborns from the moment of birth, provides parents with documentation for health insurance until a health card can be issued, and allows claims for services to be submitted promptly.

For newborns, it is standard for hospital staff or the midwife (where one is involved) to provide the parents with an “Ontario Health Coverage Infant Registration Form 4440-82”. The form asks for basic information about the baby, including name, birthdate and mailing address. It also asks the parent to confirm that the baby’s primary place of residence is and will continue to be Ontario and that the baby will be present in Ontario for 153 days in any 12-month period. The top part of the form is then sent by the hospital to ServiceOntario for processing. The bottom portion remains with the parent and is used as a temporary health card for up to 90 days, until the plastic health card is received in the mail.

The System in Practice

Complex Roles & Responsibilities

In practice, implementation of the law is complex, and numerous actors are involved in infant OHIP registration. The following section outlines the role of each actor, and what they have done to implement their responsibilities.

Ministry of Health and Long-Term Care: MOHLTC has overall accountability for infant registration policy and would be responsible for any statutory or regulatory change. MOHLTC has produced a number of relevant policy and communication documents, including the online Fact Sheet, “OHIP Eligibility of Canadian-Born Children of OHIP-Ineligible Parents.”¹⁴

MOHLTC Fact Sheet: The fact sheet outlines that uninsured parents will be given the Infant Registration Form after the baby’s birth in hospital or when attended by a midwife and that parents will have to confirm that their newborn “has a primary place of residence in Ontario and will be physically present in Ontario for at least 153 days in any twelve-month period to retain health insurance coverage.” However, the fact sheet does not provide the regulatory definition of primary place of residence.

ServiceOntario: ServiceOntario is a separate part of the Ministry of Government Services. Its mandate is to “provide centralized service delivery to individuals and businesses seeking government information and to process routine transactions such as registrations and licensing.”¹⁵ Since 2008, ServiceOntario has been responsible for health card renewal and registration. In particular, ServiceOntario is responsible for printing, delivery, processing and problem resolution for the Infant Registration Forms sent to birthing hospitals.

ServiceOntario Manual: ServiceOntario has created a comprehensive “Infant Registration Program Manual for Birthing Hospitals,” which is provided to all birthing hospitals to

describe the Infant Registration process, policies, and the roles and responsibilities of those involved.¹⁶ The Manual outlines that hospitals are required to provide the Infant Registration Form to parents for completion and to collect it prior to discharge. The Manual specifies that the parent completing the form must confirm that the newborn will meet the legal requirement for OHIP eligibility: that is, that the child's primary place of residence is and will continue to be in Ontario and that the child will be present in Ontario for 153 days in any 12-month period. However, the Manual does not include any information on the actual legal test for primary place of residence.

Hospitals: The ServiceOntario Manual is provided to all hospitals, which are then expected to develop internal procedures to ensure that the requirements of the Manual are consistently met.

The 2017 update of the Manual included significant changes to hospital responsibilities where the residency of a newborn may be in doubt. The Manual places responsibility on hospital staff and midwives to “be certain to the degree possible that newborns are going to be residents before assigning the form.” This is troubling. Given that the Manual provides no information or support in understanding or applying the legal test for primary place of residency, it is unclear on what basis hospital staff are expected to make this determination. The Manual does emphasize that the parents should never be asked by hospital staff for ‘proof’ of eligibility for OHIP coverage.

In situations where the residency of the child is in question, hospital staff must issue a standard form ‘proof of birth’ letter to the parents instead. The letter confirms the baby was delivered at the hospital, and includes the baby’s name, sex, date of birth as well as a parent’s name and address. The parents are then expected to visit a ServiceOntario Centre to determine eligibility and register their child for OHIP. That is, where staff do not have a ‘reasonable belief’ that the child will meet the residency test, the family then loses the benefits of the Infant Registration Process. They must seek coverage for their OHIP-eligible child through the in-person general OHIP registration process, which is likely a more onerous and intimidating process for new parents without status.

In practice, a range of hospital staff appear to be involved in the infant registration process and this can differ by hospital. Often registration or birthing unit clerks are responsible for issuing the forms. When clerks are unsure about immigration status or residency, social workers or supervisors frequently become involved in making decisions about issuing the forms. Finance departments are also often involved early when birth parents are uninsured and may be involved in decisions about issuing the form. Hospital ethicists are responsible for supporting ethical decision-making in hospitals and could have a role in supporting hospital policies related to infant registration.

Midwives: Midwives play an important role in infant registration as well. Hospitals are responsible for providing forms to associated midwives, who can then directly provide forms

to parents for at-home and in-hospital births they attend. Midwives are funded to provide care to pregnant residents who live within their catchment area, regardless of whether they have OHIP or immigration status.¹⁷ As a result, it may be that uninsured birth parents being seen by a midwife face fewer barriers to infant registration, since residency in a catchment area is a requirement for midwifery care coverage.

Local Health Integration Boards: LHINs plan, integrate and fund local health care. In this role, they work in partnership with health services providers, including hospitals, Community Health Centres, long-term care homes, community support services and others. Their roles include disseminating knowledge on best practices, promoting health equity and respecting the diversity of communities, and ensuring that there are appropriate processes within the local health system to respond to concerns that people raise about the services that they receive. The Toronto Central LHIN has recognized that the lack of access to care for uninsured populations is a health equity issue and is taking steps to improve access to care for this population.¹⁸

Community Health Centres: Community Health Centres (CHCs) play a vital role in assisting families without health insurance to access health care. CHCs provide community-based primary care and are mandated to provide care to uninsured populations.¹⁹ For uninsured birth parents, CHCs provide pre-natal care, make referrals to midwives and obstetricians, and provide primary care to birth parents and babies. In practice, this means that CHCs are often on the frontline in assisting uninsured parents who are having difficulty accessing OHIP registration for their newborns. They may act as system navigators or advocates. While CHCs provide important care to uninsured populations, they often have wait lists and limited funding dedicated to uninsured populations.

Legal Profession: As with any area of the law, legal professionals have an important responsibility in its implementation. Lawyers may advise hospitals on the implementation of the law. Immigration and refugee lawyers and community legal aid clinics may assist families who are living in Ontario without settled legal status and who encounter this issue. Organizations like Community Legal Education Ontario may provide plain language legal information to assist individuals, community advocates and service providers. For example, through their “Steps to Justice” program and website, Community Legal Education Ontario provides a general overview for parents on how to get a health card for their newborn but does not address the specific challenges of uninsured families.²⁰ In practice, this is not an area of the law in which the legal profession has had significant involvement. Families without legal status will be very reluctant to seek legal means to enforce rights under the *Health Insurance Act* and regulations. Lawyers who specialize in immigration and refugee law may not have expertise in the complexities of health insurance law.

Variable Hospital Infant OHIP Registration Practices

In this context of complex roles and responsibilities for newborn registration, we heard from hospital staff that there is considerable variation across and within hospitals regarding infant registration. For example, one hospital has a streamlined process in which forms are given to all parents with Ontario addresses who confirm the two statements on the Form regardless of whether the parent has OHIP coverage (i.e. the baby's primary place of residence will be Ontario and they will be physically present for 153 days in any 12-month period). In another hospital, there is a standardized practice of providing a proof of birth letter whenever the parent does not have OHIP, citizenship or landed immigration status, or permanent residency. Eligibility must then be determined in person through ServiceOntario. In other hospitals, decisions may be made on a case-by-case basis, with little guidance to staff. In multiple cases, hospital finance/billing departments questioned staff decisions to issue forms to babies.

In general, our consultations with a number of Toronto-area birthing hospitals revealed a lack of information and supports for hospital staff. Hospital staff are not being made aware of the law, the regulatory test of residency, nor the regulatory definition of primary place of residence. This contributes significantly to the variability of practices and to decisions which appear to be out of step with the law.

CHC staff are assisting parents with efforts to obtain health coverage for their newborns following denial of the Infant Registration Form. However, this can be challenging, and there may be considerable delays in OHIP registration. In one case, the baby was registered weeks after their birth, only after CHC staff helped the family apply through ServiceOntario. In another case, a baby was denied the Infant Registration Form in hospital after birth, and still did not have a health card several months later despite advocacy from a CHC. CHC staff also expressed confusion about the law and standard practice. This created challenges for them in effectively helping families to navigate the system and in advocating for clients when a denial of the Infant Registration Form appeared inappropriate.

Limited and Inadequate Information and Tools: A Key Challenge

Despite the complexity of the law in this area and the multiplicity of actors, there is little in the way of publicly available information on this issue to support families, hospital staff, and CHC staff. Among those whom we contacted, awareness of the specific provisions of the *Health Insurance Act* and Regulations was very limited.

The MOHLTC's Fact Sheet is widely used, and indeed appears to be the key reference point among hospital staff and CHCs on law and appropriate practice in this area. Unfortunately, the summary of the law in this Fact Sheet is incomplete and may be contributing to as much confusion as clarification on this issue. Specifically, the Fact Sheet does not include the

regulatory definition of primary place of residence. This omission could lead to confusion for hospitals and families alike. In addition, the Fact Sheet does not provide information about what a parent can do if a Form is not provided in hospital.

As was noted above, ServiceOntario has created a detailed manual on infant registration for hospitals. Unfortunately, the Manual requires hospital staff to provide Infant Registration Forms based on “reasonable belief” in the residency of the child, but without providing information or assistance to staff on how to make this important assessment of residency. Moreover, based on our consultations, there is limited awareness about this Manual, which is not publicly available, both among hospital staff who are responsible for infant registration and among CHCs who assist uninsured parents in accessing health insurance for their newborns. Additionally, while the publicly available MOHLTC Fact Sheet indicates that uninsured parents will receive the Form in hospital, the Manual directs hospitals staff not to provide the Form without reasonable belief of residency.

Beyond these government documents, Community Legal Education Ontario (CLEO) provides plain language legal information to Ontarians through its “Steps to Justice” program and website, which includes information on “how do I get a health card for my baby?” While a helpful general overview, this document does not address the specific challenges of uninsured and non-status parents, beyond noting that “your baby can get an OHIP card even if you don’t have one.”²¹

There is a lack of publicly available information regarding the legal eligibility requirements and registration process for newborns. Ultimately, this is likely contributing to variable hospital practices, confusion amongst stakeholders and families, and denial of OHIP registration for eligible babies.

The Consequences of Inequitable Implementation

In practice, because of the lack of a coordinated implementation strategy for the law regarding newborn health care coverage, the law is not being consistently implemented at a system level. As a result, the 2009 amendments to the law which expanded access to OHIP for newborns whose parents are uninsured, may be undermined by the ineffective current implementation. For uninsured parents who are denied in-hospital registration for their Canadian infants, accessing in-person registration through ServiceOntario or making an appeal to the Health Services Appeal and Review Board are most likely inaccessible.

This is concerning because access to health care is important for newborns and children. Health care providers help ensure newborns are and stay healthy by providing care such as well-baby checks, vaccines, physical exams, and advice.²² Denial or delay of access to health coverage for these children is therefore a significant health equity issue.

While families may be able to apply directly through ServiceOntario, this process is not designed for newborns. Unlike the streamlined in-hospital process, new parents with new babies must go in person to ServiceOntario offices with a completed general “Registration for Ontario Health Insurance Coverage form” (Form # 014-0265-82) and documents proving the parent’s identity and residency.²³ Form # 014-0265-82 is designed for new and returning residents – not newborns. It is unclear and there is no publicly available information regarding how a parent would complete the form for a newborn, particularly because Ontario-born babies are exempt from some of the legal requirements for OHIP that apply to other residents. Furthermore, these families may be reluctant to approach a government office. It is unclear how ServiceOntario clerks are responding to these families and whether they have expertise regarding the eligibility of this population of newborns whose parents are uninsured or without status.

The Health Services Appeal and Review Board was created to provide an accessible means for individuals to address denial of rights to health coverage. In this case, it is not a meaningful option. Not only do these families often lack the knowledge, skills and linguistic capacity to navigate complex processes, their lack of settled legal status in Canada makes the process completely inaccessible.

While families may be able to access some primary care through CHCs for their newborns without OHIP, this is not an adequate replacement for comprehensive OHIP coverage. CHCs provide important care to uninsured populations but often have wait lists, have limited funds dedicated to uninsured populations, and are not located in all communities. Canadian newborns and children should not have to rely solely on dedicated CHC uninsured services and funding simply because they face barriers to OHIP registration to which they are entitled. Moreover, this is not an effective use of limited CHC uninsured resources.

As a result of this implementation gap, some families may not be able to register their newborns for OHIP, despite their legal entitlement. While children can apply themselves at age 16, this is a significant gap – and they are unlikely to be aware of this possibility. Other families will experience significant delays in accessing OHIP coverage for their infants, resulting in inferior access to health care.

Towards Equitable Newborn Access to OHIP

Supporting Effective Implementation of the Infant Registration Requirements

In summary, despite a legal framework which provides all Ontario newborns with entitlement to OHIP coverage and simple registration through the hospital Infant Registration Process, newborns of parents who do not themselves have OHIP or permanent legal status do not

have consistent equitable access. Some will face a differential procedure, perhaps requiring recourse to the ServiceOntario general registration process or reliance on extensive advocacy by CHC staff. Others will fall through the cracks in this system and will not be registered at all. These children will be reliant on CHCs for health services and other services intended for those who are not currently eligible for OHIP coverage. The unintended consequence is that it undermines the provision of services for people who are without coverage and could create an unnecessary burden on the CHC services intended for uninsured populations.

Ultimately, this is due to the lack of an effective implementation strategy. Those on the frontline of the issue, whether within the hospitals or in the community, are frequently unaware of the actual requirements of the law.

There is a need to ensure that all OHIP-eligible newborns are registered for OHIP in a timely, equitable, and barrier-free way. Reaching this goal requires complementary approaches.

First, MOHLTC and Service Ontario can provide additional guidance and supports to hospitals to ensure compliance with the law and ultimately that OHIP-eligible newborns are registered for OHIP in a timely, accessible way. Secondly, good hospital practices can be shared and implemented to ensure more consistent, equitable infant OHIP registration processes across and within hospitals. Next, service providers responsible for infant birth registration require greater supports, whether in the form of access to information, improved procedures, or training. Finally, those who provide navigational and advocacy supports to uninsured parents must be empowered with the knowledge and tools to effectively fulfil this role.

Shared Responsibilities for Supporting Equitable Access

As was noted earlier in this Paper, there are many institutions involved in this issue. Equitable access to the infant registration process may be best ensured by a system-wide response, with each institution playing a role.

The following questions highlight the main gaps and opportunities for action on this issue that we have identified through this research and consultation. The questions provide a starting point that advocates and engaged stakeholders can workshop together to identify concrete steps forward.

The Ministry of Health and Long-Term Care: MOHLTC retains ultimate responsibility for the effective implementation of the *Health Insurance Act* and regulations, including infant registration. More active involvement of MOHLTC is necessary to ensure compliance with the law. The widespread reliance by hospital and CHC staff on the “OHIP Eligibility of Canadian-Born Children of OHIP-ineligible Parents” Fact Sheet highlights the centrality of MOHLTC as the authoritative voice on the law and appropriate procedure. A more effective communications approach to this issue by the MOHLTC could play a key role in its resolution.

How could the Ministry of Health and Long-Term Care more effectively ensure that eligible newborns are efficiently and fairly registered for OHIP? How might MOHLTC better communicate the rights of Ontario-born babies, whose parents are uninsured or without status, to the standard Infant Registration Process, and the responsibilities of service providers in that process?

Service Ontario: As the institution responsible for overseeing health card registration and renewal, including the Infant Registration Process, ServiceOntario is the authority on proper procedure for this process. While its Manual is in many respects helpful, it places a significant burden of legal interpretation on hospital staff, without providing the necessary information or supports. Moreover, it appears to be little known or used by staff responsible for the Infant Registration Process.

How might ServiceOntario better assist hospitals to comply with the law regarding OHIP eligibility and ultimately to ensure that eligible newborns are registered for OHIP? What additional information or supports might ServiceOntario provide to hospitals? What could be done to ensure that hospital staff have better access to the information developed by ServiceOntario?

Hospitals: Many of the hospital staff with whom we spoke expressed confusion and difficulty with their understanding of this issue. Some hospitals have good processes and knowledge, which could be shared across hospitals to strengthen implementation of the law.

Are there good practices, including information resources, training, forms or tools that could be shared and implemented to develop more consistent processes across and within hospitals to support staff in applying law in this area and to ensure OHIP-eligible newborns are registered in-hospital?

Community Health Centres: Community Health Centre staff are already active on this issue, advocating for their clients when this issue arises. However, their work has been hampered by a lack access to information and tools. There may also be a role for Community Health Centres in addressing this issue from a systems perspective, as well as from an individual one.

What supports and information could strengthen the important role that CHCs play in promoting consistent and equitable access to the Infant Registration Process?

Legal Profession: In general, the legal profession has not been engaged in this issue. However, given the complexities of the law, the significant rights at stake for uninsured families and their children, and the widespread confusion among those interacting with the law, the legal profession can play an important role. Community legal clinics, who often provide services to persons who lack legal status in Canada, may be able to provide legal information and advice on this issue to families and advocates. Community Legal Education Ontario, which plays a vital role in promoting access to justice for vulnerable and marginalized communities, may be able to share its expertise on this issue.

How can the expertise of the legal profession in interpreting the law and advocating for vulnerable individuals be effectively shared with uninsured families and with advocates and community service providers, to ensure access to rights for newborns?

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