

Patchworks of access: Education and healthcare for immigrants with precarious legal status

Patricia Landolt, Paloma E. Villegas, Francisco J. Villegas

What you need to know

Precarious legal status (PLS) migrants have different types of access to healthcare and education in Toronto depending on their situation and face both formal and informal obstacles. Formal or legal obstacles often determine access to public services based on legal status. Migrants may avoid seeking services for fear of detection and deportation, and often lack information about when and where they can access them. PLS migrants also come into contact with institutional actors who try to help them access public services. Frontline workers use informal networking strategies to open small and short-lived doors of access to services for such migrants on an individual basis.

What is this research about?

Over the last decade, the immigrant population with precarious legal status across Canada has grown significantly. In the Toronto metropolitan area alone, there are now an estimated 590,000 authorized PLS migrants. This includes foreign students, temporary migrant workers, as well as those in the 'humanitarian category' such as refugee claimants. The unauthorized PLS population is not known. Migrants of precarious legal status live in a situation of ongoing uncertainty in terms of being able to remain in the country and access rights and entitlements that others enjoy.

The presence of PLS migrants raises a central question: What rights to healthcare and education should individuals have if they are not citizens and are not on a clear path to citizenship? And what



Some see public services like education as a privilege for those with citizenship while others view it as right for everyone who lives and works in the country regardless of status. For precarious legal status migrants, debates from both sides on their access to education and healthcare are passionately argued.

right to healthcare and education should an individual have if they are not even authorized to be in Canada? Debate on this issue is heated. This research has sought to explore both the formal and informal responses to this controversial political question from different levels of decision-making and action.

What did the researchers do?

Researchers began by conducting semi-structured interviews with key informants in both the education and healthcare sectors. Focus groups were also carried out with frontline workers, elected officials, advocates and activists, and management and administrative staff. These groups were asked about the broader political landscape, how they may have helped PLS migrants to access education or healthcare services, and how strategies and negotiations had shifted over time. Researchers also reviewed documents including social service sector reports and other research articles on the topic.

What did the researchers find?

Legislation, policies, procedures and rules have changed across public sectors and government ministries in response to the growing number and needs of PLS workers and families. Two



contradicting viewpoints persist and often contribute to responses. On the one hand, some see citizenship status as the determining factor for access to rights and services. On the other, some view education and healthcare as a human right that should not be tied to legal status and be accessible for more inside of the country.

Education is relatively universal but with some limits. Since the 1990s, the Ontario Education Act has given the right to education for all children, regardless of their legal status or that of their parents or guardians. In turn, a coalition of unions, education advocates and migrant rights activists pushed for and achieved a significant positive change at the school district level. In 2007, the Toronto District School Board (TDSB) passed a “Don’t Ask Don’t Tell” policy meant to ensure that enrollment in school would be easier for PLS families and children. Families were no longer required to provide any documentation to confirm legal status. However, legislative and policy changes at the provincial and school board level cannot impede the Canadian Border Services Agency (CBSA) from carrying out its mandate. CBSA has gone into schools to detain non-status children and, since 2006, continues to wait just off school property to detain and deport non-status students. The CBSA also affirms its right to enter schools if a security concern warrants such action.

Informal strategies to expand access to schooling are complex and have involved groups of different actors. Organized social action like changing the Education Act, lobbying the “Don’t Ask Don’t Tell policy,” and providing information to staff and teachers regarding the policy changes have created real changes at the institutional level. Advocates and activists have also directly contributed by helping individual children and families. The need to continue helping families through the enrollment process reflects the ongoing difficulties of policy implementation in this vulnerable environment.

In contrast, healthcare has a weaker legal history of providing access for PLS migrants. Lobbying by health professionals to expand legal access to healthcare has had virtually no impact on policy. Community health clinics receive funding for the

uninsured, which can be used for authorized and unauthorized migrants with precarious legal status. Yet the funding pool is tiny in relation to demand and waiting lists are weeks long for clinics that are only able to provide primary care. Until June 2012, the Interim Federal Health Program ensured all refugee claimants coverage for primary and specialized care. However, new permanent residents en route to citizenship were and remain subject to a three-month wait before they are eligible for Ontario Health Insurance.

At the informal level, efforts to grant PLS migrants access to healthcare are costly. Frontline workers maintain personal and professional networks that allow them to exchange referrals and information to move PLS migrants through the health system. However, they often must use their discretion on deciding who to serve, when to call a favour, and when to use up scarce resources.

Respondents in this research varied in their opinions on access to services for precarious legal status migrants. Legal advocates linked schooling to children’s education rights. School board managers acknowledged a concern for the wellbeing of children but also worried about the costs involved. Healthcare management personnel recognized the right to healthcare for all, but the potential for subsidized medical tourism was also a concern. Frontline workers in both sectors were caught between both sides considering citizenship, fairness and fiscal responsibility or rights and justice.

About the researchers

Patricia Landolt is the principal investigator and professor of sociology at the University of Toronto Scarborough. For more information about this research, contact her at landolt@utsc.utoronto.ca.

Paloma E. Villegas is a recent graduate and Francisco Villegas is a PhD candidate both in Sociology & Equity Studies of the University of Toronto’s Ontario Institute for Studies in Education.

Keywords

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