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VIA EMAIL (hlth.minister@gov.bc.ca)

Honourable Dr. Terry Lake
Minister of Health
PO Box 9050 Stn Prov Gov
Victoria, BC V8W 9E2

Dear Minister Lake:

Re: Residency Requirements for Provincial Healthcare Coverage

We write regarding BC's imposition of a waiting period of two months, plus the balance of the month of arrival, before new and returning residents can qualify for provincial healthcare coverage.

West Coast LEAF is a non-profit organization that was formed in 1985, the year the equality guarantees of the *Canadian Charter of Rights and Freedoms* came into force. Our mission is to achieve equality by changing historic patterns of discrimination against women in BC through equality rights litigation, law reform and public legal education.

BC's healthcare waiting period is unjustifiable from both a medical and policy perspective, as well as under domestic and international law, particularly given its disproportionate and harmful impact on women with reproductive healthcare needs. We call on you to immediately eliminate the waiting period for healthcare coverage in BC.

The waiting period is not supported by medical or policy rationale

According to the BC Ministry of Health, the waiting period exists to prevent individuals coming to British Columbia exclusively so that they can receive health care services at public expense.¹ This justification is both short-sighted and inaccurate.

Rather than producing outright savings, the current system incentivizes new residents to delay seeking healthcare because they cannot pay for it. As a result, the savings generated by the waiting period are likely more than negated by increased "downstream costs," as delays in treatment can potentially lead to serious and costly medical complications and the progression of disease.² Individuals lacking health insurance tend to go to hospital emergency departments for treatment; provision of hospital care rather than preventative care burdens the system with unnecessary costs, and burdens individuals who are forced to allow their health to deteriorate before accessing appropriate healthcare services.

Medical experts have confirmed the harmful impacts of healthcare residency waiting periods. In Ontario, an identical waiting period has attracted public opposition from bodies such as the Ontario Medical Association, the Registered Nurses Association of Ontario, the Association of Ontario Midwives, and the Toronto and Ottawa Boards of Health. The OMA has stated that “There are no medical reasons to support keeping this three-month wait, and many medical reasons to support its removal.”³

The waiting period fails to be an equitable or effective way of addressing the purported problem of “medical tourism”. New immigrants to Canada must complete a rigorous process, including passing a medical exam, before being accepted into Canada; the immigration process can take several years.⁴ Pursuit of Canadian residency solely for the purpose of healthcare is unlikely and flies in the face of common sense. In addition, if it were true that individuals were willing to undergo this extended process for the sole purpose of receiving medical care, it is unlikely that an additional three month wait would deter them. Concerns about medical tourism are not only unsupported, but they are also detrimental to the overwhelming majority of new residents who come to British Columbia with no intention of taking advantage of the system because these concerns rely on harmful and discriminatory assumptions about newcomers to BC. Despite the fact that newcomers to Canada contribute a great deal to our communities and economy, we hamper their ability to make these contributions by refusing them timely health services if they are sick or injured.

The waiting period has a disproportionately negative impact on women

Not only is the waiting period poor policy, but it also creates disproportionate barriers for women, who are often in an initially vulnerable position upon immigrating to Canada. Women outnumber men in the “dependent” categories of immigration⁵ and foreign-born women tend to be disadvantaged in health compared to Canadian-born women.⁶ In particular, immigrant mothers tend to experience more postpartum health problems and worse mental health than their Canadian counterparts.⁷ This disparity renders women significantly more vulnerable to the detrimental effects of the waiting period.

These issues are particularly acute for pregnant women, who are often forced to choose between inadequate prenatal/obstetrical care and massive debt. Waiting to access care until late in a pregnancy may mean missing important screening tests that can help prevent complications for the mother or the baby, both during and after birth.⁸ Research has shown that a lack of adequate prenatal care results in a higher incidence of premature births, low birth weight, and longer stays in the neonatal intensive care unit, resulting in significantly higher costs and potentially creating future complications.⁹ Moreover, these expenses may cause women to default to home births for financial reasons, which may result in increased risk for both mother and child where such an option is not medically advisable.¹⁰ If women do opt to give birth in a hospital, a number of problematic situations can arise: healthcare providers have described discrimination amongst hospital staff over who deserves care, scenarios in which individuals are “held captive” in hospitals until they could demonstrate their ability to pay, and extremely high bills.¹¹

In Quebec, some services may be available free of charge during its healthcare waiting period. These include services required by victims of domestic violence or sexual

assault; services related to pregnancy, childbirth or termination of pregnancy; and services needed by people suffering from infectious diseases that have an impact on public health.¹² These exceptions to the Quebec waiting period reflect some recognition of the gendered impact of healthcare waiting periods. At the same time, they are far from adequate and address only the most serious gendered health threats caused by this policy. Both men and women remain vulnerable to injuries caused by accidents, acute medical events, or chronic illness. Pregnancy or victimhood should not be prerequisites to timely and accessible healthcare access.

The stress of attempting to navigate the healthcare system while avoiding exorbitant hospital bills exacerbates the anxieties faced by all new families when they arrive in Canada. Recent immigrants may lack both the resources and communication skills to deal with these challenges adequately. They are often advised to seek out private insurance, which can be complex and difficult to arrange and will likely not meet women's reproductive healthcare needs. In fact, the BC Ministry of Health has acknowledged that "private insurance companies have an almost universal policy of not covering pre-existing conditions, including pregnancy."¹³ Individuals determined to have pre-existing medical needs, including pregnant women, are most likely to need public healthcare coverage and the most vulnerable without it.

Domestic and International Human Rights Law Support Eliminating the Waiting Period

In order to receive federal funding for provincial medicare operations, provinces are required by the *Canada Health Act* to adhere to five criteria, one of which is universality. It is difficult to maintain that this requirement is meaningfully fulfilled while excluding new residents from public healthcare.¹⁴ The primary objective of the *Act* is "to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers."¹⁵ While the *Act* may not prohibit BC's waiting period, BC's decision to impose it clearly runs contrary to this objective.

In addition, the three month waiting period imposes a substantial barrier to reasonable healthcare access and, given its disproportionately harmful impact on women and newcomers to Canada, may violate the *Canadian Charter of Rights and Freedoms*, which protects individuals from discrimination on the basis of gender and citizenship status.¹⁶ Further, the Supreme Court of Canada has acknowledged that state-imposed delays in healthcare treatment, precisely the consequence of the waiting period, can have adverse physical and psychological effects, and violate an individual's right to security of the person.¹⁷ Recognizing the importance of access to healthcare generally, the Federal Court of Canada held that cuts to refugee healthcare constituted unconstitutionally cruel and unusual treatment, and amounted to the intentional targeting of a vulnerable group.¹⁸ New residents of Canada, and particularly women in need of reproductive healthcare, should not be subjected to similar intentional targeting. This is especially true when the targeting has no basis in medicine or social policy.

Finally, the case to eliminate the waiting period and provide immediate access to public healthcare to women coming into BC is further supported by Canada's obligations under international law. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women requires states to eliminate discrimination against women in the field of healthcare and to ensure equal access to healthcare services.¹⁹ The

Convention recognizes women's unique health-related needs and requires that signatory states recognize gender-based difference in health needs, including those of immigrant women,²⁰ and eliminate barriers that women face when accessing healthcare services.²¹ Canada has also signed and ratified the United Nations Convention on the Rights of the Child, which recognizes the right of children to enjoy the highest attainable standard of health and to have access to treatment facilities.²² The Convention calls on its signatories to ensure appropriate pre-natal and post-natal healthcare for mothers, recognizing the importance of such care for both mothers and children.²³ Depriving women of timely, accessible healthcare contradicts these international obligations.

Conclusion

Imposing a three month waiting period deprives women and vulnerable individuals of meaningful access to public healthcare, an incredibly vital public service. While the policy is detrimental to all new residents of Canada, it has a particularly severe impact on pregnant women and children, often with long-term effects that could easily be avoided through proactive access to healthcare services. The waiting period cannot be justified from a financial or a medical perspective and it violates Canadian and international human rights obligations. We call on BC to eliminate the waiting period immediately.

Thank you for your immediate attention to this issue. We would be pleased to meet with you at your convenience to discuss this matter further. We look forward to your response.

Yours truly,



Kendra Milne, Barrister & Solicitor
Director of Law Reform
West Coast LEAF

cc Judy Darcy, Official Opposition Spokesperson for Health via email

¹ British Columbia, "Coverage Wait Period," online:
<http://www2.gov.bc.ca/gov/topic.page?id=4126160594A249D29192B85FC20FDB32>.

² Ontario Medical Association, "Review of the OHIP Three-Month Wait: an unreasonable barrier to accessing health care" (April 2011) Ontario Medical Review at 16, online:
https://www.oma.org/Resources/Documents/Apr11_OHIP_feature_pp13-18.pdf.

³ *Ibid* at 17.

⁴ See Andrea Bobadilla, "Oh, so we're not insured?": Exploring the impact of Ontario's Health Insurance Plan on new permanent residents and healthcare providers" (2013). University of Western Ontario – Electronic Thesis and Dissertation Repository Paper 1646 at 19.

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- ⁵ Jacqueline Oxman-Martinez et al. "Intersection of Canadian Policy Parameters Affecting Women with Precarious Immigration Status: A Baseline for Understanding Barriers to Health" (2005) 7 *Journal of Immigrant Health* 247 at 247.
- ⁶ Karen M Kobayashi and Steven G Prus, "Examining the gender, ethnicity, and age dimensions of the *healthy immigrant* effect: Factors in the development of equitable health policy" (2012) 11:8 *International Journal for Equity in Health* 1 at 4, online: <http://www.biomedcentral.com/content/pdf/1475-9276-11-8.pdf>.
- ⁷ Zoua Vang et al., "The Healthy Immigrant Effect in Canada: Systematic Review" (2015) 3:1 *Population Change and Lifecourse Strategic Knowledge Cluster Discussion Paper Series* (article 4) at 1, online: <http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1012&context=pclc>.
- ⁸ C Gray et al., "Qualitative research project on health-care access for the uninsured" (2010) *Women's College Hospital Network on Uninsured Clients* (Toronto) at 14.
- ⁹ Lu et al., "Elimination of public funding of prenatal care for undocumented immigrants in California: A cost/benefit analysis" (2000) 182 *Am J Obstet Gynecol* 233.
- ¹⁰ *Supra* note 8 at 8.
- ¹¹ C Gray et al., "Qualitative research project on health-care access for the uninsured" (2010) *Women's College Hospital Network on Uninsured Clients* (Toronto) at 14.
- ¹² Régie de l'assurance maladie Québec, "Immigrants and foreign workers or students," online: <http://www.ramq.gouv.qc.ca/en/immigrants-foreign-workers-students/health-insurance/Pages/healthcare-covered.aspx>.
- ¹³ *Supra* note 1.
- ¹⁴ Y.Y. Brandon Chen, "Extending Health Care Entitlement to Lawful Non-Transient International Migrants: Untapped Potential of the Universality Principle in the Canada Health Act," (2015) 48 *UBC L Rev* 79 at para 5.
- ¹⁵ RSC 1985, c C-6, s 3.
- ¹⁶ *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143.
- ¹⁷ *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35.
- ¹⁸ *Canadian Doctors for Refugee Care v Canada (Attorney General)*, (2014) FCJ 679, at para 1078.
- ¹⁹ OHCHR, *Convention on the Elimination of All Forms of Discrimination Against Women*, GA res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, art. 12.
- ²⁰ General Recommendation No. 24: Article 12 of the Convention (women and health), HRI/GEN/1/Rev.9 (Vol. II) at 359.
- ²¹ *Ibid.* at 362.
- ²² UNGA, *Convention on the Rights of the Child*, GA res. 44/25, 20 November 1989, art. 24.
- ²³ *Ibid.*