



Access to eye health care for immigrants in the United States and the inherent guarantees of international law: a legal overview in light of transconstitutionalism

The eye care access for immigrants in the United States and the guarantees inherent in international law: a legal overview in light of transconstitutionalism

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Abstract:

This article analyzes access to eye health care for immigrants in the United States from the perspectives of constitutional law and international law. The research highlights the legal limitations faced by immigrants, especially undocumented immigrants, and examines international principles that recognize health as a fundamental human right. It exposes challenges and proposes solutions to guarantee the right to eye health for this population, highlighting legal and political pathways to expand the universalization of the right to eye health. In the United States, the immigrant population faces significant obstacles in accessing health services, especially in the area of eye health, which is fundamental to quality of life, autonomy, and social inclusion. This study investigates the legal framework for the right to eye health, describes the current situation for immigrants, identifies challenges, and proposes actions to improve management and expand access. Furthermore, it analyzes the practical challenges faced by immigrants, including economic, linguistic, and cultural barriers, reflecting the significant gap between the international obligations assumed by the United States and the practical implementation of inclusive health policies for immigrants. Finally, the article proposes guidelines for eye health management programs that can improve inclusion and quality of care, aligning national and international legal systems with effective public policies, and promoting social justice and human dignity through more efficient and equitable management.

Keywords: International Law; Fundamental Law; Health; Eye Health; Immigrants.

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1. INTRODUCTION

Eye health is essential for quality of life and social and economic integration of individuals. The World Health Organization (WHO) advocates for the inclusion of eye health in national health systems. Untreated eye diseases affect millions, harming

directly access to education and work. In the United States, immigrants, especially undocumented immigrants face significant barriers in accessing eye care. access to health is an internationally recognized human right, but its implementation varies in accordance with national policies.

In the United States, immigrants, particularly undocumented immigrants, face significant barriers to obtaining adequate health care. Yet, although the Constitution does not explicitly establish the right to health, principles such as equality and human dignity influence public policies. In the United States, the health care system is characterized by a complex network of public and private providers, marked by inequalities in access and quality of services, especially for populations marginalized. Immigrants often find themselves in vulnerable situations aggravated by factors such as lack of insurance coverage, language barriers, lack of awareness of rights, precarious immigration status, and discrimination. These obstacles directly affect access to basic health services, including eye care preventive and curative, which is vital to prevent the progression of diseases that can lead to blindness or visual impairment. In addition to the analysis of rights and guarantees within the constitutional scope and internationally, the article also explores the role of institutional *compliance* mechanisms and governance in promoting access to eye health, considering the importance of programs to improve public health management, which meet the specific needs of immigrants.

Access to healthcare is a fundamental right enshrined in various legislations constitutional and international treaties, reflecting the global recognition of their importance for human dignity and social well-being. Under Constitutional Law, the right to health is a fundamental guarantee, linked to the right to life and dignity of human person, essential pillars of contemporary legal systems. Law International, in turn, establishes obligations for States, through agreements and treaties that reinforce the commitment to universality and non-discrimination in access to services health. However, the implementation of this right faces significant challenges, mainly when it comes to vulnerable groups, such as immigrants.

In the United States, a country marked by a complex and fragmented health system, the immigrant population faces legal, economic and social barriers that limit access to adequate medical care. These difficulties become even more evident in areas specialized areas, such as eye health, a sector that demands specific attention due to its

clinical peculiarities and the direct relationship with the quality of life and work capacity of individuals.

From a Brazilian constitutional perspective, eye health is addressed through several laws and policies, such as Law No. 14,126/21, which classifies monocular vision as a disability visual and guarantees the rights of people with this condition, and Ordinance No. 957/2008, which establishes the National Policy for Ophthalmology Care for the SUS. Brazil has one of the highest rates of growth of the elderly population among the most populous countries in the world. Among the challenges that this rapid growth of the elderly population brings is the growth of prevalence of visual problems as the population becomes predominantly older. The three biggest causes of blindness in the world and in Brazil are diseases that mainly affect the elderly: cataracts, glaucoma and age-related macular degeneration (AMD). The Brazilian healthcare system has both public and private components. Unlike the United States, the Brazilian public system – the Unified Health System (SUS) – is accessible universal and financed through taxes, being managed by the federal and state governments and municipal. In the Brazilian private system there are health plans, similar to American, access to which depends on individuals joining health care plans and/or dental. In 2018 alone, 10,289,341 ophthalmological consultations were carried out by the SUS in throughout Brazil, which represented an expense of R\$ 124,649,067.77. Although the service to immigrant status is guaranteed in Brazil, the lack of documentation can make registration difficult in systems, scheduling appointments or collecting exams, and it is highly recommended that the immigrant seeks to regularize his/her migratory status as quickly as possible, as This facilitates access and continuity of care, in addition to opening doors to other rights.

This article explores the intersections between U.S. constitutional law and the the country's international commitments regarding access to health for immigrants, highlighting challenges and proposing measures to improve equity in the provision of health services ocular, in addition to analyzing, from the perspective of Constitutional Law and International Law, the barriers faced by immigrants in accessing eye health care in the United States, as well as discuss the legal and social implications of this scenario. Furthermore, the importance of eye health, the specific conditions affecting the immigrant population and the possible public policies and programs that could improve access and quality of eye care for these vulnerable groups.

The relevance of this study is justified by the growing immigrant population in the United States United and the urgent need for inclusive policies that respect human rights and promote equity in access to health. Eye health, often neglected in

public policies, deserves special attention given its direct impact on development economic and social aspects of communities. An integrated understanding of these themes makes it possible not only to identify the identification of current gaps and challenges, but also the proposition of solutions that respect fundamental rights and promote social justice, reflecting the commitments constitutional and international obligations of the United States regarding health and human rights.

2. DEVELOPMENT

2.1. CONSTITUTIONAL LAW AND ACCESS TO HEALTHCARE FROM THE PERSPECTIVE OF AMERICAN JURISDICTION

Unlike countries with an explicit provision for the right to health in the Constitution, such as Brazil, the US does not directly guarantee this fundamental right. The health system is regulated primarily by federal and state laws, most notably the *Affordable Care Act* (ACA), which expanded access but still excludes many immigrants, especially non-immigrants documented. The lack of universal coverage impacts eye health, which requires continuous monitoring.

The U.S. Constitution does not explicitly establish the right to health care. The Supreme Court, in cases like that of *Joshua DeShaney*, in which his mother sued the Department of *Winnebago* Social Services for violating Joshua's due process rights under the 14th Amendment to the United States Constitution, ruled that the government should not have a constitutional obligation to provide health services, even in situations of extreme need. Court cases have addressed immigrant access to healthcare, with decisions varying according to the courts' interpretation of the rights guaranteed by the Constitution to non-citizens. The 14th Amendment to the United States Constitution establishes the principle of equality before the law, applying to all persons within the jurisdiction of the USA, regardless of citizenship.

Supreme Court jurisprudence has reinforced that undocumented immigrants have fundamental constitutional rights, including equal access to legal protection. Historically, the U.S. healthcare system has been characterized by a mixed approach, involving public and private sectors. Programs such as *Medicaid* and *Medicare* were created to serve vulnerable populations, however, eligibility for these programs varies between states and is often restricted by criteria such as immigration status, and many immigrants face difficulties in obtaining adequate coverage for vision care.

For immigrants, access to healthcare is even more restricted. Federal laws establish specific barriers for undocumented immigrants, who generally do not have right to public health programs. This restriction directly impacts access to care ophthalmological services, which are generally considered elective and non-emergency services, making access more difficult.

2.2. FEDERAL LAWS AND EMERGENCY ACCESS IN THE UNITED STATES

Despite the absence of a positive constitutional right regarding care free healthcare, US federal laws such as the *Emergency Medical Treatment and Labor Act* (EMTALA) require hospitals to provide emergency care to everyone, regardless of immigration status. According to the aforementioned legal provision, whose literal translation into Portuguese is Emergency Medical Treatment and Labor Act of Childbirth, is a federal law passed in 1986 that requires hospitals participating in the *Medicare* program provide a medical screening to any individual seeking emergency care, regardless of your insurance or ability to pay. In However, this care is limited to emergency situations and does not cover care preventive or ongoing. *Medicaid* is a social health program in the United States for low-income families and individuals. To receive *Medicaid*, a person must be a U.S. citizen or legal permanent resident. The program includes adults of low income, their children and people with disabilities. However, just being poor does not is the determining factor in accessing *Medicaid*.

Laws like the Chinese Exclusion Act of 1882 and other policies have impacted access of immigrants to health services, restricting immigrants' access to public benefits, including *Medicaid*. Such restrictions are sometimes associated with a national policy that aims to impose limits on the risks arising from illegal immigration, such as the increase in the number of crime in vulnerable regions, among others.

2.3. INTERNATIONAL LAW AND U.S. COMMITMENTS

The Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), and the International Convention on the Elimination of All Forms of Racial Discrimination (1965) recognize the right to health as an essential human right. The United States is a signatory to treaties

international standards that recognize the right to health as a fundamental human right, as the International Covenant on Economic, Social and Cultural Rights (ICESCR). Although the country has not ratified all these treaties, as a signatory, undertakes not to adopt measures contrary to their objectives. The Universal Declaration of Human Rights, for example, states that "everyone has the right to a standard of living adequate for health and well-being." Although these treaties are not directly applicable in the U.S. legal system, they influence public policies and judicial decisions related to health.

In addition to legal commitments, there is a moral expectation that the US will promote access to health care for all within its territory, including immigrants. The exclusion of immigrants from health services can be seen as a violation of the principles of dignity human and equality.

Some American states, such as *Colorado*, have implemented programs that expand health insurance coverage to all low-income children and pregnant women, regardless of immigration status. Additionally, *Colorado* has launched insurance plans affordable healthcare for undocumented immigrants through *OmniSalud* and *Colorado Option*.

2.4. LEGAL RESTRICTIONS

In the United States, laws such as *Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)* of 1996 restricts immigrants' access to public programs health services, such as *Medicaid* and *CHIP*, especially for those without legal status. Although the The United States Constitution does not explicitly guarantee the right to health, principles such as equality before the law and due process have been used to challenge policies discriminatory measures that affect immigrants' access to healthcare.

U.S. federal law allows states to deny health benefits to immigrants. The *Public Charge Rule* (repealed in 2021) created fear of seeking care health, including ophthalmological, for fear of deportation or visa denial.

The US's failure to provide universal health protection can be seen as an affront to international commitments. The Inter-American Court of Human Rights has jurisprudence in favor of protecting the right to health of immigrants, even if they are undocumented. Bills how the *Health Equity and Access under the Law (HEAL) for Immigrant Families Act* seeks expand access to healthcare for immigrants, regardless of immigration status, by removing legal and political barriers.



Eligibility for programs like Medicaid varies between states, creating disparities in access to health care for immigrants. Some states and municipalities have implemented community clinics offering eye health services to immigrants. *New York* and *California* are examples. *NGOs* like "*Vision to Learn*" also serve communities needy.

2.5. THE ROLE OF INTERNATIONAL JURISDICTION

The US is a signatory to treaties that recognize the right to health, such as the Universal Declaration of Human Rights. Although not all treaties have legal force, binding in domestic law, they influence the formulation of public policies. In the context of International Law, principles such as non-discrimination, equality and special protection for vulnerable groups imposes obligations on States to guarantee access to eye health. Failure to do so may constitute a violation of international standards and subject States to accountability mechanisms.

Adherence to international treaties implies commitments that must be reflected in the internal policies. The lack of access to health care for immigrants can be seen as a violation of these commitments.

Organizations such as the UN, OAS and WHO should pressure the US to adopt policies compatible with human rights. Complaints in international courts may have an effect political and moral, influencing internal reforms. The United States is a signatory to several international treaties that recognize the right to health as a fundamental human right. Among these, the International Covenant on Economic, Social and Cultural Rights stands out. (ICESCR), which in its Article 12 establishes the right of everyone to the enjoyment of the highest possible standard of physical and mental health. Although the U.S. has made reservations that limit the full applicability of these treaties, they influence domestic law, especially in academic and political debates.

International law emphasizes that access to health care must be universal and without discrimination, including immigrants, regardless of their migration status.

International organizations, such as the World Health Organization (WHO) and the High United Nations High Commissioner for Refugees (UNHCR), reinforce the need for include immigrants in countries' health systems, given the vulnerability of this population. eye health, as an essential component of general health, is included in this right. Failure to adequate access to eye care can lead to irreversible vision loss,

directly impacting the right to work, education, and a dignified life. Protection international highlights the responsibility of States to eliminate legal and social barriers that impede immigrants' access to eye health. Comparatively, when analyzing access to health in Canada, the United Kingdom and France, it is noted that these countries have more inclusive health care for immigrants, including in the field of eye health. The comparison highlights the US's distancing from the principle of universality.

2.6. LOCAL INITIATIVES

In the state of California, through the *Medi-Cal program*, which is the state's *Medicaid*, provides coverage for vision services for qualified immigrants, including children and adults, even for some without full documentation, through "*Medi-Cal Access Program*" and "*California Children's Services*." In addition, community clinics in areas with high concentration of immigrants, such as Los Angeles, have screening and care programs free or low-cost eyewear, with informational material in Spanish and other languages.

In *New York*, the state has initiatives to reduce language and cultural barriers in health services, including ophthalmology. The *NY State of Health* program facilitates access to health coverage, and state *Medicaid* covers eye exams and treatments.

University extension programs, such as "*Sight for Students*," offer exams Free eye care and glasses for immigrant children. *New York* offers programs health services that include vision care for undocumented immigrants, funded by state and municipal funds. These initiatives demonstrate the positive impact of policies inclusive eye health in immigrant communities.

Despite being a state with a large immigrant population, *Texas* faces challenges due to tighter restrictions on *Medicaid* access for undocumented immigrants. Non-governmental organizations and mobile clinics have been working to provide eye care preventive measures, using partnerships with local universities and hospitals.

The state of *Florida*, as one of the American states with the highest concentration of immigrants, faces specific challenges in accessing eye health for this population, reflecting social, economic, and structural complexities. Florida has about 24 million inhabitants, with approximately 20% of immigrants, many of them from Latin American countries, Americans, the Caribbean, and Europe. This cultural diversity demands eye health systems adapted to address language and cultural barriers. Health centers qualified by Federally funded community health clinics (*FQHCs*) are community health clinics that receive government support

federal and provide care to underserved populations. These clinics represent potential opportunities to address unmet medical needs, especially in states with a large proportion of uninsured and underserved individuals, such as Florida. Assessing the presence and use of eye health services in these centers is crucial to understand and address potential gaps in care. In a cross-sectional study, *Yadlapalli et al.* analyzed these centers in *Florida* in detail to determine the presence, providers and types of eye health services, where they concluded that less than 9% of the centers offered eye health services; optometrists provided most of care. The study was conducted from November 2023 to February 2024. The database data from the US Health Resources and Services Administration was consulted to identify the *FQHCs* located in *Florida*, and among the 437 centers contacted and analyzed, only 39 (8.9%) offered eye health services. Most of these services consisted of ophthalmological evaluations, pupil dilation exams and prescriptions for glasses. In all 39 clinics, optometrists were the primary care providers, there were no reports of care by ophthalmologists, which demonstrates the lack of medical professional in basic eye health care for the American population. Furthermore, the frequency of availability of eye care varied widely between centers; some centers offered services every day, while others offered them only on certain days of the month.

The low prevalence of *FQHCs* with eye health services and the absence of care offered by ophthalmologists highlights a gap in access to care ophthalmological services for underserved populations in *Florida*. In Brazil, the Unified Health System (SUS) offers a model universalist with integrated ophthalmological services, and programs such as the “Mutirão de Cataract Surgeries” show effectiveness in broad and free access, meeting demand repressed number of surgical cases, especially in hard-to-reach cities, a model that could be implemented in American culture, thus aiming to reduce the pent-up demand for patients requiring eye surgery, especially in remote access areas.

2.7. IMPACTS OF RESTRICTIONS ON HEALTHCARE ACCESS

As consequences for Public Health, the exclusion of immigrants from health services health can lead to the worsening of communicable diseases, affecting not only individuals excluded, but also public health in general. Studies indicate that immigrants, particularly those of Latin and Asian origin, have a higher prevalence of conditions

ocular diseases such as cataracts, glaucoma and diabetic retinopathy, often associated with a lack of access to regular screenings and early treatment. The incidence of eye diseases preventable diseases is substantially higher in these groups. The lack of access to preventive care can result in more expensive emergency treatments, increasing costs to the system health and for taxpayers.

2.8. PROGRAM FOR IMPROVEMENTS IN NATIONAL POLICIES AIMED AT HEALTH

To improve national health care access policies in the United States, especially for immigrants and vulnerable populations, an effective proposal would be implementation of a National Program for Integrated Health Management for Populations Vulnerable (PNGS-V), with the following pillars: 1. expansion of coverage based on income, not in immigration status, creating a parallel public system that allows access to care basic and preventive care, without requiring proof of migratory status, using criteria income and residence, similar to *Medicaid* but unrelated to legal status, inspired by models of “minimum universality” in Europe; 2. public-private partnerships with clinics community, expanding and strengthening the network of *FQHCs* (Federally Qualified Health Centers - Federal Qualified Health Center), with resources linked to service targets for immigrants and the uninsured, thus encouraging partnerships with NGOs and religious organizations to provide preventive, dental and mental health services; 3. creation of a National Health Data and Surveillance System for Immigrants, with emphasis on the collection of anonymized data to understand the main health problems by migratory group and region, thus optimizing the flow of public policies aimed at eye health in a way more assertive, avoiding waste of resources; 4. expansion of *Medicaid*, to include pregnant immigrants and also undocumented immigrants, as long as these immigrants are in process of regularizing your immigration status, resulting in benefits that exceed the costs, improving maternal and child health and reducing future health expenditures in general, including eye health; 5. community programs and health clinics, such as the Center Boston Medical Center 's Immigrant and Refugee Health Program , which offers models effective integrated and culturally sensitive care; 6. Use of telemedicine, which has been shown to be a valuable tool for providing health care to immigrants, overcoming geographical and linguistic barriers, implementing telemedicine services for consultations ophthalmological care aimed at increasing access for isolated immigrant communities,

developing digital systems that integrate eye health information can improve care coordination and patient monitoring; 7. foster partnerships between universities, hospitals and NGOs to develop research and community-focused programs in eye health and social inclusion, establishing tax incentives for clinics and companies that offer eye health services to immigrants in vulnerable situations.

Illegal immigration presents significant challenges to legal systems across the world. Aiming to combat this immigration model and its possible risks, seeking legalization of these immigrants, it is important to emphasize that during the process of creating the system based on income and residence the immigrant is seeking to legalize his or her status immigration. Studies show that Latinos, African Americans, and Asians have less access to eye exams and prescription glasses, exacerbating inequality. Immigrants Undocumented immigrants almost never have free access to ophthalmologists or eye surgeries.

The high costs of doctor visits, exams, and glasses in the US make eye health a privilege for those with health insurance. For immigrants, especially undocumented immigrants, Ophthalmological care is almost non-existent in public health systems. Furthermore, immigrants in the United States face economic, linguistic, and legal barriers to accessing care ophthalmological. Many live without health insurance, face fear of deportation and are unaware of their rights. Problems such as cataracts, glaucoma, and diabetic retinopathy are common and neglected, worsening the quality of life and productive capacity of these individuals. The lack of English proficiency and cultural differences can make communication between patients and healthcare professionals, negatively impacting the diagnosis and treatment of eye conditions. Undocumented immigrants may avoid seeking health care due to fear of being reported to immigration authorities, which aggravates health problems untreated, and the lack of detailed data on the eye health of the immigrant population hinders the formulation of effective public policies and the adequate allocation of resources. The possible process of expanding public health programs to include immigrants undocumented, especially in critical areas such as eye health, can improve significantly impact overall public health.

Concomitantly, increased funding for community clinics that offer ophthalmological services can further expand access to preventive care and essential treatments. Non-governmental organizations (NGOs) and community clinics play a fundamental role in providing ophthalmological services to immigrants, many often filling gaps left by the public system. Visual screening programs, campaigns awareness and education on prevention are strategies adopted to mitigate the



incidence of preventable eye diseases. The integration of technology, such as telemedicine and eye health applications, has shown promise in expanding the reach of care in immigrant communities, reducing geographic and linguistic barriers. Within the scope of management, the implementation of inclusive policies requires the training of health professionals for culturally sensitive care, as well as the adoption of specific indicators for monitor access to and quality of ophthalmological services provided to immigrants. In addition, Furthermore, the articulation between migration and health policies is essential to guarantee the comprehensive coverage, reducing social costs arising from untreated visual deficits, such as loss of productivity and social dependence.

The implementation of integrated eye health programs focusing on immigrants, use of technology for telemedicine, cultural training of professionals, expansion of access health insurance and educational campaigns. International cooperation and alignment with international treaties are essential to guarantee rights. Launch educational campaigns in multiple languages to inform immigrants about their rights and eye health services available. Training of Health Professionals is essential in this process, facilitating the access to foreign professionals who can work in the United States, training them health professionals to meet the specific needs of immigrant populations, including cultural sensitivity and linguistic competence.

3. CONCLUSION

Access to eye care for immigrants in the US remains deeply limited by legal, economic, and structural barriers. Under constitutional and international law, This exclusion constitutes an affront to fundamental rights. It is therefore urgent to adopt policies inclusive public policies, legislative reforms and a new jurisprudential approach that guarantees dignified and equal treatment to all residents, regardless of their nationality or migration status.

Ensuring access to healthcare for immigrants in the United States is a matter of justice social and compliance with constitutional and international obligations. Primary prevention includes education for self-care and the use of eye protection equipment, especially in jobs with frequent occupational risks among immigrants. Secondary prevention involves periodic eye examinations for early detection and timely treatment of diseases. Cataract surgeries and treatments for glaucoma and age-related macular disease -

AMD - crucial to preventing blindness. Access to essential medications, such as eye drops and glaucoma medications, is also a challenge for many immigrants.

Public management of eye health faces financial, bureaucratic and policies to ensure universality and equity in access for immigrants, especially in the face of political controversies over immigration in the US. The lack of a universal public system reinforces inequalities and limits comprehensive interventions. Aiming to optimize eye health for the immigrant, it is necessary to expand the eligibility of immigrants for public programs health, increase funding for specialized community clinics, strengthen training in cultural health, investing in telemedicine technologies and promoting campaigns multilingual educational programs on eye health, thus developing integrated policies that consider social determinants of health for immigrants. This expanded approach demonstrates that the challenge of access to eye health for immigrants in the US is complex, demanding specific public policies, integrated management and cultural sensitivity to ensure fundamental rights to health and social inclusion.

International Human Rights Law establishes fundamental guidelines for the protection of the right to health, including eye health, as part of the right to comprehensive health. International instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disability (CRPD), ratified by the United States, create specific obligations for protect the rights of immigrants and vulnerable people. In the context of immigrants, these treaties reinforce the prohibition of discrimination in access to essential services, including ophthalmological care. Article 12 of the ICESCR requires States to adopt measures to ensure equitable and quality health care, without discrimination based on immigration status. Furthermore, the Principle of Universality, enshrined in documents such as the Declaration Universal Declaration of Human Rights, maintains that the right to health must be guaranteed to all individuals, regardless of their nationality or migratory status, which imposes specific challenges and obligations for States facing significant migration flows, like the United States.

In practical terms, the lack of integrated national policies and specific programs for the eye health of immigrants may constitute a violation of these international standards, opening space for accountability mechanisms and international cooperation. Therefore, the law international not only establishes parameters for the protection of the right to eye health of immigrants, but also requires the American State to adopt concrete measures to make it effective, facing structural, bureaucratic and socioeconomic barriers that hinder the

access to these services. Although the U.S. has international commitments that recognize the right to health, domestic policies often exclude immigrants, especially undocumented immigrants, access to adequate health care. There is an urgent need for align national policies with constitutional principles of equality and commitments international human rights standards, ensuring that everyone, regardless of status migratory, have access to eye health.

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