

HelpAge International España, April 2024

HelpAge International España Submission on the normative content related to right to health and access to health services.

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Definition

How is the human right of older persons to the highest attainable standard of physical and mental health defined in the national and local legislation in your country? If definitions are not available, how should such rights be defined considering relevant existing national, regional and international legal frameworks?

The Spanish Constitution of 1978 recognizes the right to health in article 43. It is understood that in conjunction with article 14 this is without discrimination, but it is true that case law has established that age discrimination in the health field is not so inexorable in relation to other grounds of discrimination.

The right to health in Spain is included in the regulatory principles, so it is true that its protection is lesser in relation to other rights. In addition, in the article dedicated to the elderly in the Constitution, health is also mentioned.

Another problem that we find in the Spanish case is that health management is assigned to the autonomous communities, but the coordination of external health and the general bases oversees the central government.

The right of access to health care without discrimination was severely affected for elderly people living in nursing homes during the first for the elderly living in nursing homes during the first wave of the COVID-19 pandemic.

Also, is important to highlight that this right to health is interpreted in conjunction with the standards of the regional system and the standards of the universal system of human rights, and the international human rights treaties.

The human right to health encompasses both access to health care and attention to the material and other conditions which are necessary for its full enjoyment. What provisions have been made to ensure that older persons enjoy access, on an equal basis with others, to social protection, adequate water and sanitation, adequate housing and to health education?

Social protection is regulated in article 39 of the Spanish Constitution and the right to adequate housing in article 47. The same happens with the right to health, which is found in the section on reciotres principles, which means that the level of protection they have within the national system is lower than, for example, the right to education. Regarding health education, it can be seen that they are really committed to promoting it, but it is not clearly categorized as a right.

Article 50 of the Spanish Constitution, which is specifically dedicated to the elderly, states the following: "Likewise, and independently of family obligations, they will promote their welfare through a system of social services that will attend to their specific problems of health, housing, culture and leisure".

The problem is when we go down to the regulations beyond the Spanish Constitution due to the need to coordinate state action with the different autonomous communities¹.

Scope of the rights

What are the key normative elements of the human right of older persons to the enjoyment of the highest attainable standard of physical and mental health? Please provide references to existing standards on elements including but not limited to:

- a) Prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to health.

Age discrimination is prohibited in Article 6 of Law 33/2011, of October 4, General Law on Public Health, which states: "All persons have the right to have public health actions carried out under conditions of equality without discrimination based on birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, disease or any other personal or social condition or circumstance.

But during the pandemic we have been able to see that, yes, there has been discrimination based on age, as pointed out in the report "[Abandoned to their fate. La desprotección y discriminación de las personas mayores en residencias durante la pandemia COVID-19 en España](#)" by Amnesty International Spain.

In addition, in Spain, foreigners face a barrier in access to health services as established by the Autonomous Community, which means that some foreigners residing in Spain who do not have the nationality cannot access certain health services in the Community of Madrid.

- b) Provision of promotive, preventive, curative, rehabilitative and palliative health facilities, goods and services, as well as health care and support, including on aspects such as quality of care, long-term and palliative care and support.

This system has been undergoing reform in recent years with the Agreement on Common Criteria for the accreditation and quality of the centers and services of the System for Autonomy and Care for Dependency, and with the European Care Strategy, which has been transformed into the Spanish Care Strategy, which has not yet seen the light of day and is still in process.

- c) Availability, accessibility, acceptability and quality of health facilities, goods and services as well as health care and support, including aspects such as quality of care, long-term and palliative care and support.

In general, access to services is optimal and many medicines and treatments are subsidized by the social security, unfortunately more and more people have to go to private health or private residences due to the large waiting lists within the public health and the incredible waiting lists to access the dependency and the place in the public residence.

¹ More information is available in the Helpage International Spain report: "La discriminación de las personas mayores en el ámbito de la salud". Here is the link to the report: https://www.helpage.es/wp-content/uploads/2023/10/OT-133651-INFORME-ACCESO-SALUD-2023_FINAL-1.pdf

Certain groups do have more complications in accessing certain services, especially due to the dispersion of certain specialized procedures, and as a result of where they live it is difficult to access certain treatments. This is observed more in rural areas where certain services are more distant.

d) Exercise of older persons' legal capacity on an equal basis with others, including the ability to make an informed consent, decisions and choices about their treatment and care.

The capacity of persons has been modified by Law 8/2021, of June 2, reforming civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity, and this has an impact on some cases.

Furthermore, in relation to Law 14/1986, of April 25, 1986, General Health Law, article 10 recognized a series of patients' rights, including the right to information on health services, and later, in 2002, Law 41/2002, of November 14, 2002, regulating patient autonomy and the rights and obligations regarding clinical information and documentation, was passed.

It is important, as we have already mentioned, that the competence is shared, so that the Autonomous Communities also regulate and develop patients' rights in their respective territorial scopes.

e) Access to prompt and effective remedies and redress when older persons' right to health is violated.

There are figures such as the ombudsman of the patient that in Spain are specific to health and elderly people but it is true that justice in Spain has some times that sometimes make access to it complicated.

State obligations.

What are the measures that should be undertaken by the State to respect, protect and fulfil the human right of older persons to the highest attainable standard of physical and mental health, regarding the normative elements as provided above?

The State should:

- Adequately implement what is established in the current legal framework, and above all ensure that territorial differences disappear;
- Provide greater resources to the healthcare system, due to reports such as the XXIV Observatory on Dependency or the Amnesty International report "Analysis of Healthcare Investment in Spain (2009-2021)" or the "Report of the Citizens' Commission for the truth in the residences of Madrid";
- The need for a change in the care model, where the elderly are considered as an active subject and not only a subject of protection, where the European care strategy is shown as not sufficient; and,
- To make visible and fight against ageism, which is gradually being integrated into the national system of protection of human rights, but current efforts are not enough then.

Special considerations

What special measures and specific considerations should be considered in developing the normative content on older persons' right to health?

In the right of the elderly in relation to health, there are three issues that are of utmost importance: firstly, the need for prevention, for which it is important that there is good socio-health coordination and that primary care physicians have information and good means to carry out their work.

Secondly, the phenomenon of polypharmacy, due to the fact that sometimes the older people do not take a single medication but several, it is necessary to study whether it really has adverse effects and whether it is the right medication for the older people. A third issue is the question of restraints, since we must move towards a model based on good treatment, as physical and pharmacological restraints make people more dependent, and they may lose functional capacities.

Finally, it is important to point out that these issues are only some of the specific ones in relation to the older persons and the right to health.

How should the responsibilities of non-State parties such as private sector be defined in the context of the human right to health of older persons?

The general framework for private centers is found in Law 14/1986, of April 25, 1986, General Health Law and Law 39/2006, of December 14, 2006, on the Promotion of Personal Autonomy and Care for Dependent Persons. The responsibility of private health care centers, or private residential centers for the senior citizens. These centers in Spain have to comply with the "Agreement on Common Criteria for accreditation and quality of the centers and services of the System for Autonomy and Care for Dependency" which has been modified in 2022.

That specifically contains the requirements and that in the thirteenth section it is found what obligations they contain. Especially these centers are the ones that can cause more problems, in fact, in the pandemic due to the lack of referral to hospitals (by regional protocols) many elderly people died without health care, Amnesty International Spain and other groups have made reports in this regard to document what happened.

Implementation

What are good or promising practices and main challenges faced by your country in the adoption and implementation of the normative framework on the human right to health of older persons?

It is true that the strength of the national health system is the quality of its professionals (doctors, nurses, orderlies, administrative personnel, etc.), although it is important that their training should be adapted to the aging process in which Spanish society is immersed. Una Buena práctica que nos encontramos dentro del Sistema español de sanidad es la existencia de una especialización en gerontología.

The WHO report on universal health coverage rates the Spanish health system as one of the best in the world, and this is thanks to the efforts of many health personnel. Apart from specific training on aging, it is important the coordination between autonomous communities as there are inequalities in health care treatment depending on the autonomous community or place of residence and that is important to be eliminated.

Another important point is that Spain has a good palliative care system, but it is essential to focus on creating a system of prevention to increase the autonomy of people at all stages of life.