

## 14<sup>th</sup> session of the Open-ended Working Group on Ageing

Responses of the Commissioner for Human Rights of the Republic of Poland to the guiding questions on the normative content related to **right to health and access to health services**

### Definition

1. 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?

Polish legislation contains no clear definition of the right of older persons to health.

Guidance regarding a component of this right, which is the right to health care, is set out in Article 68(3) of the Polish Constitution. The provision stipulates that public authorities shall ensure special health care to persons of older age. According to the Constitutional Tribunal, „special health care, *ex definitione*, extends beyond the scope of regular universal health care and should thus be reinforced, intensified or more specialized i.e. adjusted to the specific needs of a given group of people” (judgment of the Constitutional Tribunal, case ref. No. K 24/07).

Certain elements of the definition of the right of older persons to health can be found in Article 3(2) of the *Act of 17 August 2023 on specialist geriatric care*<sup>1</sup> (which lays down special principles of providing publicly funded geriatric care for persons aged 75+). The article defines the objectives of specialist geriatric care: (1) **maintenance of the greatest possible functional capacity and independence by persons entitled to such care**; 2) **provision of health care services as defined in the Act**; 3) planning and coordination of health care for patients of 75+ Health Centres (hereinafter referred to as the Centres), in particular by **ensuring a comprehensive geriatric assessment and developing and implementing an individual therapy plan, hereinafter referred to as the “individual plan”**; 4) provision of medication reconciliation for patients of the Centres; 5) **conducting prevention and health promotion activities adjusted to the needs of entitled persons, including activities aimed at preventing their disability and dependence**; 6) **provision of health education** to patients of the Centre and their caregivers; 7) provision of psychological support to patients of the Centres.

2. 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?

### Scope of the right

3. 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.

<sup>1</sup> Act of August 17, 2023 on specialist geriatric care (Journal of Laws of 2023, item 1831).

Polish legislation does not contain a specific prohibition on discrimination against older persons in accessing health care. The general anti-discrimination clause included in the Polish Constitution is applicable.<sup>2</sup>

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.

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.

[jointly for b and c] Such regulations (elements of such regulations) relating to older persons can be found in public policies and legislative acts including:

- *the Act on public health of 11 September 2015*<sup>3</sup> (the general duties in the field of public health include health education adjusted to the needs of different social groups, in particular children, adolescents and older persons);

- *the Act on specialist geriatric care of 17 August 2023*, which came into effect on 1 January 2024 (it provides e.g. for the establishment of "75+ Health Centres" – one such Centre per 6,000-12,000 people aged 75+, living in a given area. The Centres are to carry out a broad spectrum of activities as per Article 3(2) of the Act, including health promotion, education and counselling as well as provision of health care services and physical rehabilitation services);

- *the Act on publicly funded health care services of 27 August 2004*<sup>4</sup> (guaranteed health care services, including a service for seniors aged 65+: the provision of free medications, specialist nutritional products and medical devices as specified in the list published by the Minister of Health);

- *the Regulation of the Council of Ministers on the National Health Programme for 2021-2025 of 30 March 2021*<sup>5</sup> (according to the Programme, one of the operational objectives of the state health policy is to respond to demographic challenges, including population aging; the Programme also sets out related tasks to be carried out by the Minister of Health in cooperation with the Minister of Labour and Social Policy and the Minister of Internal Affairs - see Part IX of the Programme);

- *the Deinstitutionalization Strategy: health care for older persons* (annexed to the government's strategic document "Healthy Future. Strategic framework for the development of the health care system for 2021-2027, with an outlook to 2030"<sup>6</sup>);

- the regulations of the Minister of Health, setting out the guaranteed health care services and the general terms of contracts for the provision of such services<sup>7</sup> and the documents of the National Health Fund, which lay down detailed principles of contracting health care services<sup>8</sup> (of concluding contracts with health care providers); such documents specify e.g. minimum requirements applicable to personnel and equipment (the documents set out the terms of contracting services in numerous

<sup>2</sup> Article 32 of the Constitution: All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

<sup>3</sup> Journal of Laws of 2022, item 1608, as amended.

<sup>4</sup> Journal of Laws of 2024, item 146.

<sup>5</sup> Journal of Laws of 2021, item 642.

<sup>6</sup> See: <https://www.gov.pl/web/zdrowie/zdrowa-przyszlosc-ramy-strategiczne-rozwoju-systemu-ochrony-zdrowia-na-lata-2021-2027-z-perspektywa-do-2030> [access: 29.04.2024].

<sup>7</sup> See e.g.: *Regulation of the Minister of Health on guaranteed health care services in the field of outpatient specialist care of 6 November 2013* (Journal of Laws of 2013, item 357).

<sup>8</sup> See: <https://baw.nfz.gov.pl/NFZ/tabBrowser/mainPage>, [access 02.04.2024].

areas of medicine, including geriatrics).

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.

Everyone has legal capacity. The capacity to perform acts in law is acquired by a person with age (at the age of 13 years - limited capacity to perform acts in law; at the age of 18 - full capacity to perform acts in law). The capacity to perform acts in law can be limited by a court through a person's partial or full legal incapacitation. However, such a ruling may not be issued a court on the grounds of age.

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

Older persons may seek remedies and redress under the same procedures as all citizens. There are no specific regulations applicable to older persons in this regard.

### **State obligations**

4. 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 ensure access to health care services for older persons without any discrimination.

The State should ensure access to relevant preventive, screening and diagnostic examinations, including those aimed at early detection of dementia diseases, without discrimination on the grounds of age<sup>9</sup>. The State should ensure access to primary health care and to specialist doctors, including psychiatrists and psychologists.

The State should provide effective information on patient rights and on forms of treatment of older persons, and should ensure training of doctors and medical personnel on how to communicate with older persons using language that is free of ageism and paternalism and protects the dignity of older persons and their equal treatment<sup>10</sup>.

### **Special considerations**

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

The periodic assessment of the health situation should take into account the health condition, fitness level, care needs and loneliness of older persons. They should also be provided access to reliable and up-to-date information on the forms of support available at outpatient care facilities. Normative content should take into account the right of older persons to health, including their various health care needs, possible compound disability and vulnerability (locomotor, emotional, cognitive, sensory, etc.), simultaneous presence of multiple diseases (multimorbidity) and the use of multiple medications (multi-medication). The State should ensure that every doctor who sees older patients has knowledge of these phenomena. In addition, the State should ensure the provision of geriatric treatment, taking into account its long-term nature, in particular within the procedure called holistic geriatric assessment, which should be available not only in hospital's geriatric departments but also

<sup>9</sup> Contribution of the Expert Committee on Older Persons, operating at the CHR Office – by M. Zielićz

<sup>10</sup> Ibidem and presentation (statement) by D. Parlak in: report on the conference on violence against older persons, 15 March 2024, see: <https://bip.brpo.gov.pl/pl/content/konferencja-przemoc-wobec-osob-starszych-relacja> [access: 21.03.2024].

at outpatient facilities.

The State should provide coordinated health care for older people experiencing multimorbidity, taking into account the sensitivity of the patient and previous treatment and research.

The right to health should also include the right to information and informed consent, the right to self-determination, autonomy, long-term care and the right to palliative care without any discrimination.

6. 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 law should make it possible for non-governmental organizations to represent older persons in seeking refund of the costs of treatment and medications or in the filing of complaints regarding irregularities concerning their treatment.

### **Implementation**

7. 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?

One of the identified challenges is to ensure complete information for older persons about their health condition, medical examination results and medications taken. Currently, the system is fragmented and there are situations in which examination results are communicated only to the attending physician and not to the patient. In the case of older persons with multimorbidity, this creates an additional barrier to the provision of appropriate treatment. Furthermore, the analysed cases and research<sup>11</sup> show a challenge in the form of unequal access to services (including health and caretaking services), in particular in rural areas. In combination with the problem of transport exclusion<sup>12</sup> it causes practical problems in the implementation of programmes, such as those regarding free medications for seniors<sup>13</sup>.

<sup>11</sup> Accessibility of social services for older persons in rural areas - preliminary results of a survey conducted by the CHR in 2023 in 12 rural municipalities.

<sup>12</sup> See: <https://bip.brpo.gov.pl/pl/content/rpo-wykluczenie-komunikacyjne-zapewnic-transport-publiczny-choc-do-siedziby-gminy> [access: 29.03.2024].

<sup>13</sup> See: <https://bip.brpo.gov.pl/pl/content/rpo-dzieci-seniorzy-darmowe-leki-mz-odpowiedz> [access: 29.03.2024].