

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?**

The Inter-American Convention on the Protection of Human Rights of Older Persons, approved by Law 27,360, is the first legally binding instrument, whose objective is to promote, protect and ensure the recognition, full enjoyment and exercise, under conditions of equality, of all Rights. Human Rights and fundamental freedoms of the elderly.

The NATIONAL INSTITUTE OF SOCIAL SERVICES FOR RETIREES AND PENSIONERS (INSSJP-PAMI) of the Argentine Republic was created and is ruled by Law No. 19,032 and its amendments, under an integrative concept that centers on older people and their health, leaving aside the paradigm of mere care for illness and with it the stigma of ageing as such, integrating its social and health services into the perspective of the rights of older people.

- Right to adequate medical care.
- Right to prevention and health promotion.
- Right to autonomy and decision-making.
- Right to dignity and respect.
- Right to protection against abuse, discrimination, and mistreatment.
- Right to social and community participation.

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?**

The INSSJP has designed a model of containment and growing health care, that consists of integrated and comprehensive benefits, delivering its affiliates the following services:

I LEVEL

- **PRIMARY CARE PHYSICIAN (RESOL-2020-2383- -INSSJP-DE#INSSJP and RESOL-2023-264-INSSJP-DE#INSSJP)**

The INSSJP provides health services according to a model based on the Primary Health Care (PHC) strategy, putting people at the center, their families and communities, the comprehensiveness of care and the continuity of care, placing Primary Care Physicians (PCP) in a leading role, as the gateway to the system.

- **DIAGNOSTIC IMAGING (RESOL-2022-235-INSSJP-DE#INSSJP and RESOL- 2022-466-INSSJP-DE#INSSJP)**

Practices of diagnostic imaging services at the outpatient level for the practices of outpatient Radiology, Ultrasound, Mammography and establishing the freedom of choice of providers for the practices of outpatient diagnostic services. There are 1.654 imaging centers.

- **LABORATORY**

Diagnostic laboratory practices and services are carried out in institutions or with professionals with which the INSSJP has an agreement.

- **KINESIOLOGY**

- **PHYSIATRY II LEVEL**

- **SPECIALTY DOCTORS (Freedom of Choice RESOL-2021-74-INSSJP- DE#INSSJP)**

The freedom of choice of specialty doctors was established among all outpatient providers throughout the country. Affiliates can choose any medical practitioner or provider that is mentioned in the medical chart.

- **OPHTHALMOLOGY (RESOL-2022-807-INSSJP-DE#INSSJP)**

Affiliates have ophthalmological medical care, with the freedom of choosing those providers related to that specialty.

- **EMERGENCY AND SCHEDULED CLINICAL AND SURGICAL HOSPITALIZATION**

It guarantees that those affiliates who require inpatient medical care have an available bed, according to the complexity of the case with a systemic approach.

- **SPECIALIZED DIAGNOSIS AND TREATMENT PRACTICES**

It guarantees the adequate diagnosis of the pathology or ailment for its subsequent approach with the available health resources.

- **REHABILITATION**

The INSSJP provides benefits for people with disabilities, that aim to acquire and/or restore skills and interests, with the intention of reaching the appropriate psychophysical and social level in order to achieve their social integration.

- **HOME HOSPITALIZATION (RESOL-2020-2379-INSSJP-DE#INSSJP)**

This Comprehensive Home Hospitalization model reaches out monthly to 22.463 affiliates; promoting the integration of the patient into the family group to achieve the state of well-being available according to the health situation.

- **DIALYSIS (RESOLUTION N° 0968/DE/2017)**

Up to date, 10.955 patients receive assistance in 349 dialysis centers, registered in INCUCAI, distributed throughout the country and that belong to Dialysis Networks or individual providers, (a total of 404 operational centers).

- **MEDICATIONS**

The Institute has a broad and comprehensive model not only in inpatient or outpatient medication provision, but also with 100% economic coverage. This results in a no charge for the affiliates segment according to a list of enabled active ingredients and those

indicated in the Mandatory Medical Program (Programa Médico Obligatorio - PMO). The coverage is given through approximately 14.000 pharmacies across the country.

III LEVEL

- **SURGERIES: VASCULAR – NEUROSURGERY – CARDIOVASCULAR – NUCLEAR MEDICINE**

- **HIGHLY COMPLEX SERVICES AND PRACTICES**

Magnetic resonance imaging (MRI); Computerized tomography (CT scan) and Bone Densitometry test; Eco Doppler, and Highly Complex Laboratory services are provided.

- **TRANSPLANTATION MODEL (RESOL-2019-1281-INSSJP-DE#INSSJP)**

Organ and Tissue Transplant System OTTS (Sistema Unificado de Trasplante de Órganos y Tejidos - SUTOT according to the Spanish acronym).

- **MENTAL HEALTH MODEL (RESOL-2023-562-INSSJP-DE#INSSJP)**

This is a community based model, which focuses on the promotion, prevention and psychosocial rehabilitation in mental health.

Thus, outpatient care networks were extended and strengthened with the purpose of guaranteeing treatments and promoting accessibility. Finally, psychosocial rehabilitation practices, subjective recovery, and psychiatric and psychological medical care are included.

INSTITUTIONAL PROGRAMS

- **PALLIATIVE CARE PROGRAM (RESOL-2022-1008-INSSJP-DE#INSSJP)**

The Home-based Palliative Care Program for cancer patients in the advanced and terminal stages of the disease.

- **HEALTHY LIVER PROGRAM (RESOL-2023-809-INSSJP-DE#INSSJP)**

The Program's objective is to prevent, monitor and evaluate through liver function tests in order to guarantee accessibility, know the degree of progression of these diseases and avoid possible complications that might arise from the lack timely attention.

- **NUTRITIONAL SUPPORT PROGRAM (RESOL-2024-685-INSSJP- DE#INSSJP)**

The Programs objective is to promote actions aimed at guaranteeing equitable access to benefits for adequate nutritional treatment in each patient, where through the assessment of nutritional status, nutrients are indicated considering access and nursing and medical professional care, carrying out the reports.

- **COMPREHENSIVE CANCER CARE AND TREATMENT PROGRAM (RESOL- 2022-973-INSSJP-DE-INSSJP)**

This Program seeks to provide effective responses, and with the intention of incorporating innovative drugs with proven efficacy, various oncology protocols have been reviewed. Moreover, the INSSJP-PAMI seeks to incorporate innovation in a sustainable way in order to hold and expand the available treatment options.

The protocols constitute the treatment guidelines for each oncological pathology and its stages established by PAMI. The updating of these protocols allows the incorporation of new treatments and ensures that they are cost-effective, supported by national and international guidelines and adapted to our population.

- **COMPREHENSIVE HEARING HEALTH PROGRAM (RESOL-2022-1571- INSSJP- DE#INSSJP)**

The Program develops educational and informative campaigns, prepares and distributes guides for the diagnosis and treatment of hearing loss. In addition, it promotes and facilitates equitable access to diagnosis and treatment.

- **COMPREHENSIVE DENTAL CARE PROGRAM (RESOL-2022-1315-INSSJP- DE#INSSJP)**

The main objective is to preserve the oral health of affiliates by carrying out activities of promotion, prevention and diagnosis of prevalent pathologies (dental consultations and practices, and all preventive dentistry, pediatric dentistry, periodontics, endodontics, oral surgery and intraoral radiology are included). It also includes highly complex practices, oral rehabilitation and diagnostic imaging.

- **CHECK YOURSELF AT HOME PROGRAM (RESOL-2020-2311-INSSJP- DE#INSSJP)**

Connects affiliates with the health system for the control of Chronic Non-Communicable Diseases (NDC), in order to guarantee accessibility, know the degree of advance of these diseases and prevent complications that might arise from the lack of adequate care.

- **NATIONAL VACCINE PLAN (DI-2024-124-INSSJP-SPS#INSSJP)**

On April 1st 2024 the "XXXII Influenza Vaccination Campaign" began, these corresponds to the 13th week of the 2024 epidemiological calendar. Moreover, the "Pneumococcal Vaccination Campaign" of the Institute continues.

- **CARE PROGRAM FOR MALVINAS WAR VETERANS**

- **DISABILITY CARE PROGRAM**

SPECIAL PROVISIONS

- **OPTICS (RESOL-2022-808-INSSJP-DE#INSSJP)**

Its objective is to meet the demand of affiliated people up to a maximum of one pair of long-distance vision glasses and one pair of short vision glasses; or one pair of bifocal glasses, per affiliate person, per benefit year.

- **Ostomy, Ileostomy, Oxygen, Diapers, Surgical Supplies, Physiatrist Elements (Orthopedic Beds, Mattress, Wheelchairs, Canes, Crutches, Walkers, Toilets) Orthoses.**

- National Social Security Act # 24241.
- National Comprehensive Sex Education Act # 26150.
- National Housing Program for Retirees and Pensioners 2021-2023 (Own House - Active House).
- Program for Access to Water, Sanitation, and Hygiene in Dispersed Rural Areas, approved by Resolution 37/2022.
- Programs for access to clean water and basic sanitation.

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?

Since the Constitutional Reform of 1994, the right to health has a constitutional basis in the following articles:

Article 42, Right of consumers to the protection of their health in the consumer relationship.

The right to health is referenced when environmental law is enshrined. As stated in Article 41, the environment must be healthy and balanced, suitable for human development.

Article 75, paragraph 22, by giving constitutional hierarchy to the International Human Rights Treaties, which expressly protects health; and in section 23 by enshrining the obligation of the National State to provide for national prosperity and human development.

The Patient's Rights Law (Law 26.529 and amending Law 26.742), embodies the Rights of patients and places, as a pillar, the recognition of the supreme dignity and autonomy of the

human person. Therefore, patients have the right, without discrimination of any kind, to medical assistance from health professionals. These must provide patients with dignified and respectful treatment. They also have the right to privacy and confidentiality. Likewise, driven by the bioethics of Human Rights, informed consent has citizenship status, through which, and based on the autonomy of will, the patient 'has the right to accept or reject certain therapies or medical or biological procedures'. The decision-making power of the patient, based on values such as dignity and autonomy, grants him the power to make final will decisions, (Law 26.742) materializing the right to a dignified death respecting the principle of autonomy of the will as a basis for freedom of availability on one's own body.

- National Constitution
- International Human Rights Treaties and International Assemblies¹

The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights or Pact of San Jose, Costa Rica; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocol; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities; First World Assembly on Ageing, Vienna 1982, Second World Assembly on Ageing, Madrid 2002, Brasilia Declaration 2007, San Jose Charter on the Rights of Older Persons in Latin America and the Caribbean 2012.

- Inter-American Convention on the Protection of the Human Rights of Older Persons (Act # 27360)
- National Mental Health Act # 26657
- National Patient's Rights Act # 26529)
- Act # 19032 on Medical Coverage for Older Persons (PAMI - Comprehensive Medical Care Program)
- National Program for Active Aging and Health for Older Persons (PRONEAS)

4. 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: The right to equality before the law and the principle of non-discrimination are provided in the National Constitution (Articles 16, 37 and 75, paragraphs 2, 19, 22 and 23) and in various international instruments that enjoy equal hierarchy status. This principle is established in the Argentine National Constitution, which prohibits discrimination on the grounds of age (Article 16). Furthermore, Article 42 refers to consumers and users of goods and services having the right, in consumer relations, to the protection of their health, safety, and economic interests; to adequate and truthful information; to freedom of choice, and to conditions of fair and dignified treatment. The National Act of Patient's Rights #26529 establishes the right to receive medical care without discrimination based on age or other grounds. The Inter-American Convention on the Protection of Older Persons Human Rights (Act 27360) Articles: 3, 4, 5, 6, 18, 19, 20, 24, 27, 30, 31, among others, address this issue.
- b) Provision facilities, goods, and health services: The National Mental Health Act # 26657 establishes the right of all individuals to receive mental health care, including older

people, and promotes the provision of services for promotion, prevention, assistance, rehabilitation, and social reintegration in this field. The Inter-American Convention on the Human Rights' Protection of Older Persons (Act # 27360) Article 12 'Right of the Older Person Receiving Long-Term Care Services'. Article 19 'Right to Health.

- PALLIATIVE CARE (RESOL-2022-1008-INSSJP-DE#INSSJP)

PAMI approved the creation of the Home-bases Palliative Care Program for cancer patients in the advanced and terminal stages of the disease and new providers were incorporated.

- INPATIENT REHABILITATION (RESOL-2023-1596-INSSJP-DE#INSSJP)

The New Model of Physical Rehabilitation was approved for inpatient and outpatient care.

- 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: The National Act on Sexual and Reproductive (Act # 25673) guarantees access to sexual and reproductive health services of good quality, also for the elderly.

- HOME HOSPITALIZATION (RESOL-2020-2379-INSSJP-DE#INSSJP)

The new model of Comprehensive Home Hospitalization (Internación Domiciliaria Integral – IDI for the acronym in Spanish) is approved at the national level.

- KINESIOLOGY (RESOL-2024-455-INSSJP-DE#INSSJP)

It seeks to promote access to kinesiology services for affiliated people throughout the national territory.

- 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 Inter-American Convention on the Human Rights' Protection for Older Persons (Act# 27360) Articles 30 and 31.

Please refer to answer detailed in Question 3.

- e) Access to prompt and effective remedies and redress when older persons' right to health is violated: The National Patient Rights Law (# 26529) establishes the right of individuals to receive prompt and effective redress in case their rights are violated in the healthcare domain. National Mental Health Law (#26657): The Act sets forth key principles such as respect for the dignity and rights of individuals, promotion of autonomy and social inclusion, and comprehensive mental healthcare at all levels of service.

PAMI has different communication channels to quickly repair these situations:

- "Pami Escucha" (Pami Listens) Resolution 1005/85, which after a few years, became Line 138 (Resolution SC 208 from 2002).

- Immediate response (Resolution 56/DE/97)-

- Institutional Web page (<https://www.pami.org.ar/reclamo/mipami>)

By virtue of the cooperation agreement between the National Public Prosecutor's Office and the PAMI-INSSJP, signed on October 2, 2004, which materialized through PGN No. 155/04, the Fiscal Unit was created for the Investigation of Crimes Committed in the Area of Action of the INSSJP

(UFI-PAMI). The original purpose of this particular Prosecutor's Office focused on investigating all those illicit maneuvers that may affect the services of public interest that the National Social Work provides to its beneficiaries and/or the patrimonial resources assigned to the Institute to meet such objectives. This specialized Fiscal Unit aims to receive complaints from individuals, affiliates, agents of the Institute or providers, referring to actions or omissions that may constitute a crime within the scope of action of the INSSJP-PAMI.

State obligations

5. 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?
 - Comprehensive Legislation
 - Gerontological Public Policies with a Rights-Based Approach
 - Universal Access to Health
 - Education on Health
 - Rights Promotion
 - Active Participation of Older Persons

Special considerations

6. What special measures and specific considerations should be considered in developing the normative content on older persons' right to health?
 - Focus on Active and Healthy Aging
 - Universal Accessibility
 - Comprehensive Health Care
 - Focus on Promotion and Prevention
 - Regard of Comorbidities
 - Inclusion of Gender Perspective
 - Citizen Participation

Implementation

7. 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?
 - Respect for Human Rights
 - Compliance with Regulations and Standards
 - Guarantee of Equitable Access
 - Quality and Safety of Services
 - Transparency and Accountability
 - Participation and Consultation
 - Commitment to Continuous Improvement

Good Practices and Promising Initiatives

- Legislation and Public Policies: Argentina has a solid legislation regarding human rights, where we can emphasize the importance of adhering to the Inter-American Convention on the Human Rights' Protection of Older Persons (Act # 27360) and the implementation of specific public policies in this area, which have been developed by leading areas such as the National Office of Policies for Older Adults (DINAPAM).
- Comprehensive Care Programs: Comprehensive care programs for older adults have been implemented, including health services, home care, leisure, and cultural activities, as well as programs promoting active and healthy aging.
- Citizen Participation: Active participation of older adults and their organizations in the design, implementation, and evaluation of policies and programs affecting their rights is fostered, ensuring their voice and representation in the decision-making processes.

Challenges:

- Equitable Access to Health Services
- Discrimination, Abuse, and Mistreatment
- Socioeconomic Inequality
- Training of Health Professionals
- Intersectoral Coordination