

Submission on the normative content related to the right to health and access to health services¹

14th Working Session of the Open-ended Working Group on Ageing, 2024

1. Definition, scope and State obligations

Older persons have the right to enjoy the highest attainable standard of physical and mental health on an equal basis with others and without discrimination on the basis of age or any other status.²

Older persons have the right to access goods, facilities and services that meet their physical, mental, cognitive and psychosocial health and long-term care and support needs.³

States should include comprehensive human rights provisions that fully and effectively protect every aspect of the right to health and access to health services in older age.

Non-discrimination

States should take effective and appropriate measures to ensure non-discrimination in access to comprehensive health and care services on the basis of older age.

Availability

Older persons have the right to access functioning public health and health-care facilities, goods and services, which must be in sufficient quantity.⁴

¹ On the right to health, also see HelpAge International, Healthy ageing for us all: What older persons say about their right to health, 2023, London, HelpAge International, <https://www.helpage.org/resource/healthy-ageing-for-us-all/>.

² Article 12 ICESR. For more detailed provisions on the scope of older persons' right to health and States' obligations, see HelpAge's submission to the 13th session of the Open-Ended Working Group on Ageing. The right to health of certain groups and the prohibition of discrimination against them in terms of access to health care is also addressed in category-specific UN treaties (See Article 12 CEDAW; Article 5(e)(iv) CERD; Articles 3(3), 23 and 24 CRC; Articles 28, 43(1)(e), 45(1)(c) and 70 CRMW; Article 25 CRPD), but not for older persons. Access to health and health services are reflected to some extent at regional level (Articles 6, 11, 12, and 19 Inter-American Convention on Protecting the Human Rights of Older Persons; articles 11 and 15 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa) but these are limited in geographical scope and/or are do not cover the full continuum of health promotion, prevention, treatment, specialist care, rehabilitation, long-term care and support, and palliative and end-of-life care, with access to related medicines, vaccines and assistive products.

³ This should include long term care, including rehabilitation and assistive devices, as well as access to health prevention programs.

⁴ This should include safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel (including for geriatric, dementia and palliative care) receiving domestically competitive salaries, and essential drugs.

Accessibility

Older persons have the right to access health facilities, goods and services, which must be within safe physical reach.

Affordability

Older persons have the right to access affordable health facilities, goods and services.

Acceptability

Older persons have the right to access health facilities, goods and services that respect medical ethics, are culturally appropriate and sensitive to gender, disability and life-cycle requirements.

Quality

Older persons have the right to health facilities, goods and services that are scientifically and medically appropriate and of good quality.

Legal capacity

Older persons have the right to legal capacity to exercise their decisions in all matters related to their health.

Older persons have the right to equal recognition before the law and the right to a family and private life, which are both central to autonomy and independence.⁵

Information and consent

Older persons have the right to make their own decisions and have their voices heard (informed consent) in all matters relating to their health and care.

Older persons have the right to access information, in appropriate formats, about their health status so their decisions can be free, prior and informed. The confidentiality of information should be guaranteed.

Older persons have the right to make advance instructions about health and care, including palliative and end of life care.

Older persons have the right to give and withdraw at any time their free, prior, on-going and informed consent in all matters relating to their health.

⁵ However, there are no explicit standards on autonomy and independence in older age in international human rights law. Article 12 of the Convention on the Rights of Persons with Disabilities, for example, affirms that all persons with disabilities have full legal capacity and that perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity. It does not apply to older persons without disabilities, however, and there are no explicit international standards on how these rights apply in older age.

Participation

Older persons have the right to meaningful participation in the design, planning, budgeting and implementation of health and care policies and programmatic actions.

Remedies and redress

Older persons have the right to access effective dispute resolution, complaint mechanisms and administrative and/or judicial processes to seek remedies and redress when their health related rights are violated.

Non-state parties

Under their duty to protect, States have an obligation to ensure that all non-state parties involved in the provision of health and care services for older persons comply with the standards above.

For more information

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