

**14th session of the Open-ended Working Group on Ageing  
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 Statutory Health Law, Law 1751 of 2015, which regulates the fundamental right to health in Colombia, including the elderly, in its Article 2 states: "The fundamental right to health is autonomous and inalienable individually and collectively. It includes access to health services in a timely, effective and quality manner for the preservation, improvement and promotion of health. The State shall adopt policies to ensure equal treatment and opportunities in access to promotion, prevention, diagnosis, treatment, rehabilitation and palliation activities for all persons.

In accordance with article 49 of the Political Constitution, its provision as a mandatory essential public service is executed under the non-delegable direction, supervision, organization, regulation, coordination and control of the State". Article 11 of the same Law states that the elderly population, together with other populations, are subjects of special protection by the State and that: "Their health care will not be limited by any type of administrative or economic restriction. The institutions that are part of the health sector must define intersectoral and interdisciplinary care processes that guarantee the best conditions of care".

In accordance with this commitment, with Law 2055 of 2020, the Colombian State has approved in its constitutional and legal framework, the Inter-American Convention on Protecting the Human Rights of Older Persons, ratified in September 2022 before the OAS.

**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?**

Firstly, the Colombian health system, based on the provisions of Law 1751 of 2015, is progressively adapting its response to the particular needs of older persons. Likewise, regarding compliance with the commitments and obligations established in Law 2055 of 2020, mentioned above.

It is important to consider that the National Public Policy on Aging and Old Age mentioned above, develops comprehensive elements and from a social determinants approach, which is evident in the following 6 strategic axes that correspond to the specific objectives of the Policy:

1. Overcoming the economic dependence of older persons.

2. Inclusion and citizen participation.
3. Life free of violence for older persons.
4. Comprehensive health care, dependency care and organization of care services.
5. Healthy aging for an independent, autonomous and productive life in old age.
6. Education, training and research to face the challenge of aging and old age.

These 6 axes are in charge of 13 ministries and 3 administrative departments that of course have the challenge of articulating and developing intersectoral strategies to guarantee the rights of older persons, their quality of life and their well-being.

Finally, the Ten-Year Public Health Plan 2022-2031 (Resolutions 1035 of 2022 and 2367 of 2023) distinguishes older persons as subjects of special protection and includes the social determinants of health, as one of its premises and one of its strategic areas.

### **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.**

- Law 1751 of 2015: Statutory health law. Establishes priority and barrier-free health care for the elderly as subjects of special protection.
- Law 2055 of 2020: approves the Inter-American Convention on Protecting the Human Rights of Older Persons. Ratification in September 2022.
- Decree 681 of 2022: adopts the National Public Policy on Aging and Old Age 2022-2031: Strategic axis Violence-free life for older persons, which seeks to guarantee legal protection, good treatment, the elimination of discrimination and violence against old persons.
- Resolution 1378 of 2015: establishes provisions for health care and social protection of the elderly, with priority. Within the principles of universality and the differential approach, it is stated that in the provision of health services there should be no discrimination towards older persons.

**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.**

- Law 361 of 1997: Title IV, establishes accessibility provisions for all physical spaces that facilitate the movement and accessibility of people with reduced mobility, permanent or temporary.
- Law 9 of 1979: dictates Health Measures that all public establishments must comply with.
- Law 1733 of 2014: regulates palliative care services for the comprehensive management of patients with terminal, chronic, degenerative and irreversible diseases in any phase of the disease with a high impact on quality of life. Furthermore, it expresses the right of these patients to voluntarily and early desist from unnecessary medical treatments that do not comply with the principles of therapeutic proportionality and do not represent a dignified life for the patient, specifically in cases in which there is a diagnosis of an ongoing disease. chronic, degenerative and irreversible terminal with high impact on quality of life.
- Law 1315 of 2009: establishes the minimum conditions for long-stay centers for older persons in protection centers, day centers and care institutions.
- Law 1751 of 2015: Statutory health law. Establishes priority and barrier-free health care for the elderly as subjects of special protection.
- Decree 681 of 2022: adopts the National Public Policy on Aging and Old Age 2022-2031: Strategic axis Comprehensive health care, dependency care and organization of the care service, which seeks to guarantee the fundamental right to health and socio-health services and/or long-term care.
- Resolutions 024 of 2017 and 055 of 2018 establish standards and criteria for the operation of care centers for the elderly.

**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.**

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

- Law 1751 of 2015: Statutory health law. Establishes priority and barrier-free health care for the elderly as subjects of special protection.
- Law 2055 of 2020: approves the Inter-American Convention on Protecting the Human Rights of Older Persons. Ratification in September 2022.
- Decree 681 of 2022: Adopts the National Public Policy on Aging and Old Age 2022-2031: Strategic axis Comprehensive health care, dependency care and organization of the care service, which seeks to guarantee the fundamental right to health and socio-health services and/or long-term care and that includes free and informed consent. Likewise, the strategic axis Violence-free life for older persons, which includes as a line of action, strengthening legal capacity and access to justice for older persons.

### **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?**

Article 5 of Law 1751 of 2015 establishes exhaustively the obligations of the State regarding the guarantee of the right to health of Colombians, including

older persons, who, as mentioned above, this Law indicates, as subjects of special protection by the Health System, and in that sense, the Colombian State is responsible for respecting, protecting and guaranteeing the effective enjoyment of the fundamental right to health, and points out the following measures:

- a. Refrain from directly or indirectly affecting the enjoyment of the fundamental right to health, from adopting decisions that lead to the deterioration of the health of the population and from carrying out any action or omission that may result in damage to people's health;
- b. Formulate and adopt health policies aimed at guaranteeing the effective enjoyment of the right to equal treatment and opportunities for the entire population, ensuring the harmonious coordination of the actions of all agents of the System;
- c. Formulate and adopt policies that promote health promotion, prevention and care of illness and rehabilitation of its consequences, through collective and individual actions;
- d. Establish mechanisms to prevent the violation of the fundamental right to health and determine its sanctioning regime;
- e. Exercise adequate inspection, surveillance and control through a body and/or specialized entities determined for this purpose;
- f. Ensure compliance with the principles of the fundamental right to health throughout the national territory, according to the health needs of the population;
- g. Carry out continuous monitoring of the evolution of the population's health conditions throughout the life cycle of people;
- h. Carry out evaluations on the results of effective enjoyment of the fundamental right to health, based on its principles and on the way in which the System advances in a reasonable and progressive manner in guaranteeing the fundamental right to health;
- i. Adopt the regulations and policies essential to sustainably finance health services and guarantee the flow of resources to meet the health needs of the population in a timely and sufficient manner. Intervene the market for medicines, medical devices and health supplies in order to optimize their use, avoid inequalities in access, ensure their quality or in general when a serious impact may arise on the provision of the service.

On the other hand, currently, the intersectoral action plan is being formulated for the implementation of the National Public Policy on Aging and Old Age 2022-2031, with specific actions as described in the answer to question 1.

### **Special considerations**

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

**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 Colombian State has inspection, surveillance and control bodies regarding compliance with the right to health, such as the Departmental/District Health Secretariats (or whoever takes their place in the territories) and the National Health Superintendence. Additionally, the system includes instances of citizen participation and oversight through which all Colombians can monitor and impact compliance with the right to health (Resolution 2063 of 2013), which despite existing and being regulated, the participation and impact of older persons must be reinforced and qualified.

Currently in Colombia, a structural reform project of the health system is underway that seeks to guarantee health care close to the population, without access barriers and without discrimination and to do so, it strengthens the response of the public sector and demands greater guarantees against responsibility of the private sector.

Additionally, the ten-year public health plan that is operationalized in the territories seeks to articulate the different government and private sectors to guarantee the construction of a healthy environment for all. However, it is important to develop regulations that in a binding manner generate responsibilities of this sector and the community in general regarding the health of older persons.

## **7. 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?**

- The complete implementation of mental health care for older persons and their families.
- The implementation of health care for older persons from a family and community approach.
- The implementation of the Comprehensive Care route for the Promotion and Maintenance of Health throughout the national territory.
- The development of information systems that allow for real and updated data on the comprehensive health situation of older persons from each territory.
- Have an updated registry of social and health service providers -REPSO
- Consolidate the Care Policy, and the development of an articulation with the health system and the National Public Policy on Aging and Old Age, which also involves intersectoral articulation work and interinstitutional.
- The definition of socio-health services that allow the articulation of intersectoral care and that facilitate the guarantee of the right to health, proposed within the framework of the National Public Policy on aging and Old Age.
- Consolidate the participation of older persons in health participation instances.