

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?
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.
- 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.
- 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.

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?

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?

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?

The right to Health and Access to Health services is grounded in the right to the enjoyment of the highest attainable standard of health guaranteed in Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Covenant unequivocally states that the States Parties are obliged to ensure that everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. The rights covered by the UDHR and the ICESCR are also guaranteed for older persons – as for everyone else – under German law.

In Germany, statutory health insurance is designed as a compulsory insurance with the task of maintaining, restoring and improving the health of all insured persons. The health insurance funds must help all members (= all insured persons) to promote their own health competence and personal responsibility by providing information, advice and services and work towards healthy living conditions, taking into account gender, age and disability-specific characteristics. Gender- and age-specific characteristics must be considered in the provision of health care services. The special needs of disabled and chronically ill people must also be taken into account. Norms and standards for quality of services and for quality assurance mechanisms are laid down by law or via sublegal acts and guidelines for the various health and care sectors. The responsibilities for the health care and long-term care infrastructure are laid down by law to ensure the accessibility, comprehensiveness and availability of the necessary services in all relevant sectors.

Concerning the aspects of long-term care and palliative care raised above there is to be mentioned that both include a broad range of personal, social, and medical services and support, e.g. support with (instrumental) activities of daily living. Services are thus provided by various providers in multiple contexts, e.g. at home or in residential facilities. Even though people of all ages can develop long-term care or palliative care needs, the risk of being in need of such services usually increases in old age. However, while there is some overlap in the scope of operation of the right to long-term care and the right to palliative care, it is important to note that the two rights are not identical in scope and operation. Against this background, in Germany, access to long-term care services and palliative care services is regulated by law. There are mandatory schemes for long-term care

insurance as well as healthcare insurance under which palliative care is covered; this ensures all persons have access to the services covered by these insurance systems. Amid current challenges, the federal government started various measures and initiatives to further improve the provision of care in both sectors in recent years.