**NHRI – ARGENTNA**

**DEFENSOR DEL PUEBLO DE LA NACIÓN**

**NORMATIVE FRAMEWORK OF THE ISSUES EXAMINED AT THE IX SESSION OF**

**THE OPEN-ENDED WORKING GROUP OF AGEING**

**Long-term and Palliative Care**

**National legal framework and normative elements**

1. **What are the legal provisions in your country that recognizes the right to long-term and**

 **palliative care? Do they have a constitutional legislative or executive foundation?**

1. **What are the key normative elements of the rights to long-term and palliative care? Please provide references to existing laws and standards where applicable.**

Palliative care has been regulated at a national level by means of a set of norms of different hierarchy. By means of Resolution No. 201/02 of the national Ministry of Health the access to palliative care was granted by including a compulsory and comprehensive coverage within the Compulsory Medical Plan1 (Plan Médico Obligatorio –PMO- in Spanish). Likewise, the National Palliative Care Programme for Cancer Patients was created by Resolutions Nº 587/10 and No. 1253 / E / 16, also within the scope of the national Ministry of Health.

The 26,742 Act (known as "Death with Dignity") is a federal rule which granted the right of patients to receive palliative care, according to section 2, paragraph h) of such Act. Here, it must be remembered that the new national Civil and Commercial Code which came into force from August 1, 2015 included the right to receive palliative care in section 59, as did the aforementioned Act. Moreover, on November 22, 2017, the "Inter-American Convention on Protecting the Human Rights of Older Persons," entered into force, which acknowledged the palliative care benefit in section 2.

1. **How should *long-term care and palliative care* be legally defined?**

In 2004, the WHO report "Policies and Managerial Guidelines for National Cancer Control Programs" the Palliative Care" redefined "palliative care" as follows: “*Palliative care is an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual.”*

**Implementation**

1. **What are the policies and programmes adopted by your country to guarantee older person’s**

 **enjoyment of their rights to long-term care and palliative care?**

The National Institute for Retirees and Pensioners (Instituto de Servicios Sociales para Jubilados y Pensionados -INSSJP- in Spanish) adopted an internal regulation (Resolution No. 379 / DE / 08), which included a palliative care module for those special cases in which rehabilitation is no possible, as in the case of terminally ill patients, among others. Also a set of regulations for the "comprehensive home care” was approved by means of Disposition No. 0990/172 which included palliative care in its module 9. The national Ministry of Health created the National Palliative Care Programme within the scope of the National Cancer Institute (Instituto Nacional del Cáncer -INC-, in Spanish) by means of Resolution Nº 1253 -E / 2016, in order to ensure access to palliative care for cancer patients in all phases of their diseases. The Ministry of Social Development has implemented a series of programmes to provide care and assistance to this segment of the population. In this sense, the Home-based Care Programme, which operates under its control, is aimed at training individuals aged over 18 intended to give assistance, medication management, help with eating and accident prevention for older persons.

**5.** **What are the best practices and main challenges in adopting and implementing a normative**

 **framework to implement these rights?**

Probably there is still a long way to go, because palliative care is a benefit which has been acknowledged very recently.

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1 The PMO is a basic primary care of services and medicines which includes preventive care, ambulatory care, emergencies, hospitalization, among

 other benefits. It should be understood as a minimum standard of benefits and not as a maximum ceiling.

 2 http://institucional.pami.org.ar/files/boletines\_inssjp/07-07-17.pdf

 As to the disadvantages of our current healthcare system, the following are the most important:

1. as regards patients and their families: several medical benefits are not covered -or partially covered- such as the availability and accessibility to all essential drugs for the treatment of symptoms; the palliative care provided by different assistive devices and health services, etc.;
2. as regards healthcare providers: lack of full-time availability of professionals devoted to the

 provision of palliative care and absence of an easy access for them to receive specific training,

 among others.

c) as regards public health: our healthcare service does not cover: funding and development of

 palliative care programmes at national, provincial, regional and institutional levels; uniform and

 substantive policies and legislation providing universal and integral palliative care coverage.

**Equality and non-discrimination**

1. **Which are the measures adopted to ensure equitable access by older persons to the enjoyment**

 **of the right to long-term and palliative care, paying special attention to those who are**

 **vulnerable or in vulnerable situation?**

As regards supportive services for older persons, we must mention here that the social welfare system in Argentina is founded on a family-related basis: this entails that families are responsible for taking care of their dependent older adults. Such situation is not completely solved by the provision of healthcare services offered by the State and this causes a high impact on the middle class of society, the most ageing population in large urban centres, which is unable to sustain the increased costs of private medical services. By contrast, this problem does not present major complications for those who are in vulnerable situation, since the State has appropriate devices for giving them assistance. The same applies to upper classes, who solve it by contracting private services. As a rule, families frequently seek help among domestic workers, home caregivers dealing with more specific tasks or nurses, if necessary. However, human resources are not always available and, at the same time, they do not always have enough training for undertaking supportive tasks devoted to older persons. Much has been done in recent years to improve training courses for home caregivers, also day centres for older adults have been created within the scope of the Buenos Aires City Government and the INSSJP. However, some difficulties arose concerning the coverage via trade union-run healthcare insurance services (*obras sociales)* which hinder the recognition of "home caregivers" as part of "healthcare providers".

The intention here is that older adults can live autonomously and can stay at home without being uprooted from their own families. The National Registry of Caregivers has been created in the scope of the aforementioned Ministry with the purpose of facilitating access and giving more transparency to the operation of carers' service. Further, the "Federal Council of Older Adults", which operates under the control of said Ministry, has the responsibility to coordinate public policies devoted to older adults. It is made up of government and non-government representatives from every province. Finally, the Long-term Residential Programme has been conceived for those older people who do not have enough resources to live on their own or with family members; or without formal healthcare coverage.

**Participation**

1. **Does the design and implementation of normative and political framework related to long-term**

 **and palliative care include an effective and meaningful participation of older persons?**

As regards the normative implementation, given the provisions set forth by 26,529 Act still in force: "Rights concerning the patient-healthcare providers and institutions relationship", patients enjoy the rights enshrined therein.

**Accountability**

1. **What judicial and non judicial mechanisms are in place for older persons to complain and seek**

 **redress for denial of their right to long-term and palliative care?**

All individuals enjoy the rights enshrined in our national Constitution, Treaties and other applicable laws, without age-related limitations in both, at administrative or judicial level, being able to seek redress, beyond its viability.