

## 14<sup>TH</sup> SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING

### RIGHT TO HEALTH AND ACCESS TO HEALTH SERVICES

#### *Response by United States of America*

#### **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?**

Healthy ageing is a primary focus of the United States (U.S.) Government, both through advances to public health, and in increasing the access, affordability, and quality of healthcare for older persons. The U.S. has several laws that support the enjoyment of the highest attainable standard of physical and mental health and to support access to health services that support older persons ability to: receive necessary medical treatment, regardless of age; make decisions about their healthcare and be fully informed about treatment options, risks, and benefits; receive care without discrimination based on age, race, gender, disability, or other factors; protection of their personal health information; and access to processes to address complaints about healthcare services. The U.S. does not have one standard definition or law for this purpose.

**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 Older Americans Act (OAA), is the cornerstone law that outlines the responsibility of government to assist all older persons to secure equal opportunity and inclusion into society, and funds a variety of services and programs that maximize the ability of older persons to live independently and actively participate in the community. Other complementary laws and programs address the affordable, equitable, and sustainable access to safe water and sanitation, health education, social protection, housing, transportation, etc.

#### **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.**

The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. Section 1557 of the Patient Protection and Affordable Care Act (Section 1557), prohibits discrimination on the basis of race, color, national origin, age, disability, or sex, in covered health programs or activities. The Americans with Disabilities Act (ADA) protect individuals with disabilities, including older persons, from discrimination based on disability in various settings, including healthcare. The Age Discrimination in Employment Act (ADEA) safeguards older individuals from employment discrimination based on age. The Fair Housing Act prohibits housing discrimination based on various protected characteristics, including age. Section 504 of the Rehabilitation Act (Section 504) protects persons with disabilities from discrimination by recipients of federal funding.

**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.**

The U.S. utilizes a mix of public laws, policies and programs and private options to provide for the whole continuum of health care and support of older persons. Key public programs include Medicare (health care coverage for persons 65+) and Medicaid (health coverage for persons of all ages living below a certain income level). Programs authorized by the OAA and the Public Health Services Act, offer a variety of health promotion and evidence-based disease prevention and management interventions.

**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 ADA and Section 504 require healthcare settings to be physically accessible and provide reasonable accommodations ensuring equal access to services. Section 1557 requires health care facilities and providers to conduct access assessments and develop plans to address identified barriers. The Medicare and Medicaid programs establish quality measures and certification requirements for healthcare facilities to ensure a minimum level of care, patient safety, infection control, effective management of chronic conditions, among others.

**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 Patient Self-Determination Act (PSDA) guarantees access to informed consent and advance directives. The ADA and Section 504 protect individuals with disabilities, including older persons with age-related limitations, from discrimination in healthcare decision-making.

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

Older persons have many options for redress, including filing a complaint to national offices for civil rights; filing a complaint with state-level agencies that license and inspect health and long-term care facilities for violations of regulations or standards of care; through the national Joint Care Commission for complaints or concerns with hospital care; or with the ombudsman for their health insurance benefit under Medicare for problems with coverage or care. See more details in the redress section of the response to guiding questions regarding the *accessibility, infrastructure and habitat*.

#### **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?**

In the coming months, the U.S. Department of Health and Human Services Office of Civil Rights will release updated regulations for Section 1557 (see above).

#### **Special considerations**

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

Strengthen the paid and unpaid carers that support older persons to live in their own homes and communities and participate fully in community life. Continued development and expansion of health

promotion and evidence-based disease prevention and management interventions for older persons.

**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?**

Non-State parties should promote respect for the human rights of older persons alongside state parties by: raising awareness and providing advocacy; developing and providing services, supports and best practices that complement State efforts and address gaps; assessing and monitoring policies and practices, documenting rights violations or abuses, and fulfilling their responsibility to respect rights; conducting research on challenges faced by older persons and informing policy recommendations; and developing cross sector collaborations that implement national and local strategies for protecting 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?**

In September 2022, ACL released the first-ever National Strategy to Support Family Caregivers developed with direct input from family caregivers, persons receiving services, and policy and research experts. The Strategy includes nearly 350 actions the federal government is taking to support family caregivers and more than 150 actions by the private sector and other levels of government.