

*HelpAge International España, February 2023*

## **HelpAge International España Submission on the Normative Content of Right to health and access to health services**

13th Working Session of the Open-ended Working Group on Ageing, 2023

### **National legal and policy framework**

The Spanish legal framework recognizes within the Constitution the right to health in article 43 in general to the population but then article 50 of the Spanish Constitution includes the specific obligation in relation to the promotion of their welfare through social services taking into account the health needs of the older people.

The right to health in Spain faces a challenge in terms of the implementation of the right. This is since although the right to health is included in the Spanish constitution, articles 148 and 149 of this text organize who is in charge of guaranteeing it. On the one hand, the central State is obliged to establish the bases and general coordination of health, while the implementation of this right is ceded to the regions, which can generate and in practice generates distortions and that the right to health is not guaranteed in the same way throughout the territory.

The law 14/1986, of April 25, General Health, constitutes the reference standard in this area, insofar as it establishes the structure and operation of the public health system, oriented primarily to the promotion of health and the prevention of the diseases. According to its article 1, its object consists of the general regulation of all actions that make it possible to make effective the right to health protection recognized in article 43 and concordant of the Constitution. The law has the status of basic norm, in the sense of article 149.1.16.<sup>a</sup> of the Constitution, and is applicable throughout the national territory.

Holders of the rights to health protection and health care are:

- a) all Spaniards and foreign citizens who have established their residence in the national territory, and
- b) non-resident foreigners in Spain, as well as Spaniards outside the national territory, who will have this right guaranteed in the manner established by international laws and agreements.

Although in some autonomous communities the right to health of foreigners is true that it is more limited.

In each Autonomous Community, a health service will be established, made up of all the centers, services and establishments of the Community itself, Provincial Councils and Town Halls and any other intra-community territorial Administrations, which will be managed under the responsibility of the respective Autonomous Community.

The Autonomous Communities will delimit and establish in their territory demarcations called health areas, which are the fundamental structures of the health system, responsible for the unitary management of the centers and establishments of the health service of the Autonomous Community in their territorial demarcation and of the benefits and health programs to be developed by them.

It is true that with the progressive aging of the population, the different autonomous communities are implementing specific health promotion programs for the older people, although it is true that some services

such as nutrition or physiotherapy are lacking in the public health system in Spain. In addition, in Spain nowadays we have been seeing how the public health system is being privatized and leading to different health strikes by health personnel due to the lack of time to see the patients.

### **Equality and non-discrimination**

The legislative changes that have occurred within the Spanish legislative framework reinforce awareness and protection in relation to discrimination based on age with Law 15/2022, of July 12, comprehensive for equal treatment and non-discrimination and later with the modification on the capacity of law 8/202, of June 2, which reforms the civil and procedural legislation to support people with disabilities in the exercise of their legal capacity.

### **Accountability**

Regarding accountability mechanisms, it is important to recognize that there are two different mechanisms: on the one hand, non-judicial mechanisms, such as complaints within the healthcare centers, or, before moving on to judicial mechanisms, what is known as a prior administrative complaint must be filed with the corresponding body. As far as the judicial mechanisms are concerned, it is true that if we are dealing with a private center we will have to resort to civil or criminal law depending on the subject matter of the claim, but if, on the other hand, we are dealing with a public hospital we will have to resort to the administrative order and therefore the prior administrative claim is perceptive.

It is true that it is important to highlight that in judicial mechanisms it is really necessary to highlight the contributions that have already been made in relation to the right of access to justice [here](#).

Regarding the participation mechanisms, they do not exist as such to ensure that older people are part of the process of implementing the right, but rather it depends on what the public bodies decide, nor are there evaluation mechanisms in relation to the public health system.