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PUBLIC MEDICAL SERVICES AND THE HUMAN RIGHT TO HEALTH

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Alma de los Ángeles Ríos Ruíz[1]
alma_rios_r@hotmail.com
Antonio Fuente del Campo[2]
afuentedelcampo@prodigy.net.mx

ABSTRACT: The health is a human right suscribed in international treaties and national legislations. Health security is by its collective nature, the responsibility of the public health system, is related to the quality of care and the positive balance between its risks and benefits, taking care to reduce the dangers associated. The issue of security is fundamental because its implications for the health and life of the human being. Health care is a social necessity, and because the risks and dangers existing in the hospital environment, it is essential to adopt safety programs, since not doing so puts everyone who participates and makes use of the hospital at risk, as well as to the environment.

KEYWORDS: health security, human right, right to health, health, quality, medical care.

SUMARY: 1. The human right to the health. 2. Sanitary Security 3. The health system in Mexico 4. The human right to health in Mexico and health security. Conclusions. Bibliohemerography

1. The human right to the health

The health is much more than absence of disease or to have access to medical services; it

[1] Definitive Professor, Full Time "C", Faculty of Law of the UNAM. Member of the Researchers National System, Level 1.

[2] Professor of Plastic, Aesthetic and Reconstructive Surgery, Universidad Nacional Autonoma de Mexico postgraduate Department. Division of Plastic, Aesthetic and Reconstructive Surgery, General Hospital "Dr. Manuel Gea González ", Mexico City. Full member National Academy of Medicine of Mexico. Emeritus Member of the Mexican Academy of Surgery. Coordinator of Sub-Committee of Plastic, Aesthetic and Reconstructive Surgery, School of Medicine, UNAM. Academic Director of the Mexican Association of Plastic, Aesthetic and Reconstructive Surgery. Director of "Aqtuel" Plastic Surgery Clinic.

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is a fundamental right related to all the aspects of life, so it is important to understand the health in a wider possible way. The human rights are inherent to all the persons, without any distinction of nationality, place of residence, gender, sexual preferences, ethnic group, color, religion, language, or any other condition. Besides the beginning of universality and not discrimination, the human rights are interrelated, interdependent and indivisible; so, it is not possible to rabdomly respect some of them but not all, because all of them are interrelated to make possible the enjoyment of the others.

The World Health Organization established as definition of health the condition of complete physical, mental and social wellness.

To this definition of health other dimensions have been joining, as the aptitude to work or the health as a constant and dynamic phenomenon throughout the time, up to established that the health is a multidimensional phenomenon. Then, there is stated that the notion of health has been evolving along the history from a medical - biological approach up to a global and integral concept that incorporates the social ecologic paradigm (Fruits and Royo, 2006).[3]

The Law to the social Health is developing across the demands (lawsuits) of the citizens, shaping the current definition of the health, which is the condition (state) of absolute physical, mental social and well-being, become institutionalized internationally in 1946 with the Constitution of the World Health Organization (WHO). Later, this right will find to major development, inside the area of the DESC. It is important to clarify that, before the development of the Law of Health inside the international organizations, the concept was focusing in the designs of treating the disease and the governments were facing to the problems of health, from the public charity. [4]

Now, the Law to Health is considered to be a right that integrates not only the idea of treating the disease, but also to prevent it, for what, the physical and social environment of the man acquires a new relevance inside this right. This new conception of the health implies better protection to the human being, as well as major administrative and economic commitment on the part of the States. This definition characterized by its extent, reveals the need to delimit the scope and to determine the implications of the Law of Health. To know the elements that integrate it and its characteristics, is essential to establish a mechanism for verification and control of the States obligations.

[3] Prosalus y Cruz Roja Española (2014). *"Comprendiendo el derecho humano a la salud"*. Madrid, Edit. Advantia, pp. 114.
[4] Montiel, L. (2004). *"Derecho a la salud en México. Un análisis desde el debate teórico contemporáneo de la justicia sanitaria"*. Revista IIDH, Vol. 40, pp. 291-313.

The right to health must be understood as the right to enjoy of the whole range of facilities, goods, services and conditions to reach the highest possible level of health.[5]

The right to health means that the governments must create the conditions that allow to all the persons to live as healthily as possible. These conditions include the availability guaranteed of services of health, conditions of healthy and sure work, suitable housing and nutritius food. The right to the health includes the access to a sanitary opportune, acceptable, attainable attention and of satisfactory quality.

In this respect, the health must be understood is a state of complete physical, mental and social wellness, and not only the absence of affections or diseases. The right to the health is dedicated in international and regional agreements of human rights, in the constitutions of countries of the whole world and is recognized internationaly by the laws of the human rights.

Article 25 of the Universal Declaration of Human Rights devotes the right to health in the following terms: "Everyone has the right to an adequate standard of living that assures, as well as the family, health and welfare, especially the provision of food, clothing, housing, medical care and necessary social services, are also entitled to insurance in case of unemployment, illness, disability, widowhood, old age or other causes of loss of livelihoods due to circumstances outside his will."

In the International Agreement of Economic, Social and Cultural Laws, it is considered to be the fundamental instrument for the protection of the right to the health, in this one is recognized the right of which every person should enjoy the highest possible level of physical and mental health. In the International Agreement of Economic, Social and Cultural Laws, it is considered to be the fundamental instrument for the protection of the right to the health, in this one is recognized the right of which every person should enjoy the highest possible level of physical and mental health. In the article 12 it is established that in order the State assures the full efficiency of the right to the health it is necessary:

- The reduction of the infant mortality and to guarantee the healthy development of the children;
- The improvement of the hygiene of the work and of the environment;

[5] Idem.

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- The prevention and the treatment of the epidemic, endemic, professional diseases and of another nature, and the fight against them;
- The creation of conditions that assure the access to all for the attention of the health.

In the American Declaration of the Laws and Duties (Homework) of the Man of 1948 is admitted in the article XI, that every person has the right to have their health preserved by sanitary and social regulations, relative to food, clothing, housing and medical care, corresponding to the level allowed by the public and community resources.

by public and community resources.by sanitary and social measures, relative to the supply(food), the garment, the housing and the medical assistance, correspondents to the level that the public resources allow and of the community.

The Convention on the Elimination of all the forms of Discrimination against the Woman (1979) arranges that the States Parties shall adopt the necessary measures to eliminate discrimination against the women in the medical care, in order to ensure access health services, including those to the family planning.

The Additional Protocol to the American Convention on Human rights as for Economic, Social and Cultural Laws, better acquaintance as " Protocol of San Salvador " (1988), recognizes that everyone has the right to health, as the enjoyment of the highest possible level of physical, mental and social well-being.

The Convention on the Laws of the Child (1989) establishes in article 24 that States they must recognize the right of the children to the enjoyment of the health at the highest level, as well as to the services for the treatment of illiness and rehabilitation.

The Committee of Economic, Social and Cultural Laws of the United Nations, in the year 2000 adopted a general observation (number fourteen of the Committee of Economic, Social and Cultural Laws) on the right to the health. In the above mentioned general observation affirms that the right to the health includes not only the attention of opportune health, but also, the access to clean drinkable water and adequate conditions, adequate supply of healthy food, adequate nutrition and housing, healthy conditions at work and the environment, and access to education and information on health related issues about questions related to the health, included the sexual and reproductive health.

The right to the health, is strictly linked to the exercise of other human rights as; life, human dignity, housing, food, non-discrimination, equality, access to information, private life, among others.[6]

In this respect, it is possible to observe that the human right to the health does not limit itself only to the medical attention, but he(she) understands(includes) a series of socioeconomic factors, necessary, such minimums as(like): suitable supply(food), clean and drinkable water, housing deigns, conditions of sure work, sanitary suitable conditions, between(among) others.

Therefore, the medical practice must be carried out from the singular daily actions of the professionals and the health team with the people, up to the formulation and implementation of public policies.

The right to health includes some freedoms. Such freedoms include the right to not be submitted to medical treatment without the own assent, for example experiments and medical investigations or forced sterilization, and not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.[7]

In this regard, it is the obligation of States to protect and promote human rights. Obligations in this regard are defined and guaranteed by customary international law and international human rights treaties, which impose on the States that have ratified them the obligation to enforce those rights.

Therefore, it is essential to establish accountability mechanisms to guarantee respect for the obligations deriving from the right to health for States. The vigilance and the account surrender of the States take place national, regionally and internationally and involves diverse agents, namely, the proper State, NGO, national institutions of human rights or organs created by virtue of international agreements.[8]

Given the right to health protection arises the obligation of medical institutions and all its staff to provide medical care that meets these principles, so if their performance fails to do so they would be subject to legal liability.

[6] Nohely Bastidas Matheus, "LA MALA PRÁCTICA MÉDICA Y LOS DERECHOS HUMANOS", RAZÓN Y PALABRA Primera Revista Electrónica en América Latina Especializada en Comunicación, http://www.razonypalabra.org.mx/N/N81/M81/18_Bastidas_M81.pdf.
[7] El derecho a la salud, Folleto informativo Nº 31, Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, Ginebra 2008, p. 4.
[8] Ibídem., p.45.

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Relation between health and t human rights

There are complex links between health and human rights:

· The violation or neglect of human rights can have serious consequences for health;

· Health policies and programs can promote or violate human rights, depending on how they are formulated or applied;

· Vulnerability to ill health can be reduced by adopting measures to respect, protect and fulfill human rights. The normative content of each right is stated in its entirety in human rights instruments. Below are some examples of how the normative content of some of the other key human rights related to health is formulated in human rights instruments:

· Torture: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one will be subjected without their free consent to medical or scientific experiments. "

· Violence against children: Violence against children: "All appropriate legislative, administrative, social and educational measures shall be taken to protect the child against all forms of physical or mental harm or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse ».

· Traditional harmful Practices: traditional harmful Practices: They will be adopted " effective and appropriate measures [...] to abolish the traditional practices that perform harmful to the health of the children ".

· Participation: The right to a participation " active, free and significant ".

· Information: «Freedom to seek, receive and disseminate information and ideas of all kinds.»

· Privacy: "No one shall be subjected to arbitrary or illegal interference with his private life."

· Scientific progress: The right of every person to enjoy the benefits of scientific progress and its applications.

· Education: The right to education, in particular to know the basic principles of children's health and nutrition, the advantages of breastfeeding, hygiene and environmental

sanitation and accident prevention measures, and to receive support for apply that knowledge.

· Food and nutrition: "The right of every person to adequate food and the fundamental right of every person to be protected against hunger".

· Standard of living: Everyone has the right to an adequate standard of living, including adequate food, clothing and housing, and medical care and necessary social services.

· Right to social security: The right of every person to social security, including the social insurance.

What is meant by a health approach based on human rights?

A health approach based on human rights means:

·To use the human rights as framework for the health development.

· Evaluate the consequences of any policy, program or health legislation for human rights and adopt measures in this regard.

· Take into account human rights in the conception, application, supervision and evaluation of all types of policies and programs (political, economic and social, among others) that are related to health.

The fundamental principles that should be applied in these processes could be the following [9]

To respect the human dignity.

- ✓ Give attention to the groups of society considered most vulnerable. In other words, recognize and take into account the characteristics of the people affected by health policies, strategies and programs, that is children, adolescents, women and men; the indigenous and tribal peoples; national, ethnic, religious and linguistic minorities; the internally displaced; the refugees; immigrants and migrants; the elderly; people with disabilities; The prisoners; groups of people economically disadvantaged or marginalized for some other reason, and vulnerable groups.

[9] Ídem.

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- ✓ Ensure that health systems are made accessible to all, especially to the most vulnerable or marginalized sectors of the population, in fact and in law, without discrimination on any of the prohibited grounds.
- ✓ Adopt a gender perspective and recognize that biological and socio-cultural factors have a significant impact on the health of men and women and that it is necessary to keep these differences in mind in policies and programs.
- ✓ Guarantees the equality and not discrimination, already be voluntary or involuntary, in the formulation and putting in practice of the programs of health.
- ✓ Break down health-related data to determine if there is underlying discrimination.
- ✓ Guarantee the free, fruitful and effective participation of the beneficiaries of health development policies or programs in the decision-making processes that affect them.
- ✓ To guarantee the free, fruitful and effective participation of the beneficiaries of the policies or programs of sanitary.
- ✓ Guarantee the free, fruitful and effective participation of the beneficiaries of health development policies or programs in the decision-making processes that affect them.
- ✓ Guarantee the free, fruitful and effective participation of the beneficiaries of health development policies or programs in the decision-making processes that affect them.
- ✓ Promote and protect the right to education and the right to seek, receive and disseminate information and ideas related to health issues. However, the right to information should not undermine the right to privacy, which means that personal data related to health should be treated confidentially.
- ✓ Let a health policy or program limit the exercise or enjoyment of a right only as a last resort and not consider that it is legitimate unless all the provisions of the Syracuse Principles are complied with.
- ✓ Confront the consequences for human rights of any law, policy or health program with the public health objectives pursued, and achieve an optimal balance between obtaining positive results from the point of view of public health and promotion and protection of human rights.
- ✓ Make explicit references to international human rights norms and standards to highlight the way in which human rights are applied to a health policy, program or law and the relationship that exists between them.

- ✓ To pursue the fundamental explicit objective of activities aimed at improving health, the realization of the right to enjoy the maximum degree of health that can be achieved.
- ✓ State the specific obligations of governments to respect, protect and fulfill human rights.
- ✓ Define benchmarks and indicators to monitor the progressive realization of rights in the field of health.
- ✓ Increase transparency and demand a more responsible management of health issues, as a fundamental principle in all stages of program development.
- ✓ Introduce safeguards to protect minorities, migrants and other "unpopular" groups in the countries from major threats in order to counteract power imbalances. An example of this would be the establishment of recourse mechanisms for cases of violations of rights related to health.
- ✓

2. Sanitary Security

A main obligation of the government with the population is to protect their life and health. This commitment is not only ethical, but must have an institutional structure that supports it day by day. This must have two basic pillars. One is a surveillance and epidemiological intervention system capable of detecting and timely facing a health emergency. The other is a system of protection against health risks, for example, toxic substances in food and beverages, drugs with serious side effects, deceptive advertising, and so on.[10]

Health security is, by nature, collective and the responsibility of the public health system. Mexico formally has an epidemiological surveillance system and a Federal Commission for Protection against Health Risks (Cofepris). However, during the past year both have proven to be more of paper than solid and acting structures.[11]

The issue of security is fundamental because of its implications for the health and life of the human being. Every organization must assume the management of security risk to achieve the commitment of its members and prepare for the identification, prevention, reduction, elimination, substitution and mitigation of the factors that may trigger emergencies. Guide decision-making to strengthen the conditions of the infrastructure, mitigate potential environmental risks, assume the regulatory compliance of the security management in the

[10] Laurell, A. C. (5 de febrero de 2010). "Seguridad sanitaria incierta". La Jornada. [Fecha de consulta: 29 de marzo de 2018] Recuperado de http://www.jornada.unam.mx/2010/02/05/ciencias/a03a1cie
[11] Idem.

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Hospitals; in addition to the application of anti-seismic regulations in the design and construction of infrastructure; application of sanitary measures; conformation of emergency brigades; Declaration of emergency and disaster prevention and control policies; application of construction standards. The above aspects must be monitored by territorial entities, and Universal Declaration of Human Rights.[12]

In recent years, Quality of Care has become a relevant issue in the Government's health agendas. Under current health requirements, institutions have been forced to incorporate this aspect into the planning of their activities, focused mainly on maintaining a high level of care continuity. Safety is one of the dimensions of quality of care. Its meaning is aimed at a positive balance between risks and benefits, reducing the dangers associated with health care. Health care has become a social necessity and the need to adopt safety programs in the face of the risks and dangers existing in the hospital environment has been recognized, since not doing so puts at risk all those who collaborate and do use of the hospital, and also the environment.[13]

In our country, the regulation of medical practice has evolved with the participation of various actors: academies, schools and medical associations; General Health Council, Ministry of Health, National Commission of Medical Arbitration, Ministry of Public Education and insurance companies; But regulation for what?

The health regulation model has been conceived as a practice of authority in relation to compliance with standards and operates within a framework of rigidity that emphasizes its actions more towards the search for omissions than towards the identification of solutions and the promotion of good health security practices. The health regulation model has been conceived as a practice of authority in relation to compliance with standards and operates within a framework of rigidity that emphasizes its actions more towards the search for omissions than towards the identification of solutions and the promotion of good health security practices.[14]

The quality, safety and effectiveness of health care services are objectives that concern governments, health professionals and society as a whole, and risk management in health services is the set of activities designed to identify, evaluate and reduce or eliminate the risk of an adverse event that affects.

[12] González, G., Pertuz, Y., Expósito, M. Y. (2016). "Gestión de la seguridad hospitalaria en unidades de atención pediátrica". En Revista Cubana de Enfermería, vol. 32(2), pp. 207-2017.
[13] Idem.
[14] Trujillo, A. (2009). *"Normatividad y regulación sanitaria en México"*. Rev Mex Med Tran, Vol. 2, Supl. 1, pp S32-S34.

- People: patients, health personnel, managers and other workers.
- The facilities: buildings, equipment and medical devices, furniture, environment.
- Economic resources: Investments, growth and development funds, research resources.
- The prestige and reputation of the institution and its professionals: staff satisfaction, reputation, intellectual property, relevance, customer attraction.

Health regulation in Mexico is a permanent and dynamic process since it depends on human activity itself, the development of new products and services; also of the technological advances and the discovery of increasingly complex therapeutic alternatives; In addition, society is increasingly aware of quality and safety; In this way, risk management and quality management are combined in the preparation of the regulatory framework for health regulation.[15]

3. The health system in Mexico

The public sector includes social security institutions such as the Mexican Institute of Social Security (IMSS), the Institute of Security and Social Services to State Workers (ISSSTE), Petróleos Mexicanos (PEMEX), Secretariat of National Defense (SEDENA), Secretariat of the Navy (SEMAR) and others, which provide services to workers in the formal sector of the economy, and institutions that protect or provide services to the population without social security, including the Seguro Popular de Health (SPS), the Ministry of Health (SS), the State Health Services (SESA) and the IMSS-Oportunidades Program (IMSS-O).

The private sector provides services to the population with payment capacity. The financing of social security institutions comes from three sources:

a) Government contributions.

b) Employer contributions (which in the case of ISSSTE, PEMEX, SEDENA and SEMAR is the government itself)

c) Contributions from the employees.

These institutions provide their services in their own facilities and with their own staff. Both the SS and the SESA are financed with resources from the federal government and state governments, as well as a small contribution paid by users when they receive care (recovery fees). The population of responsibility of the SS and the SESA is served in the

[15] Idem.

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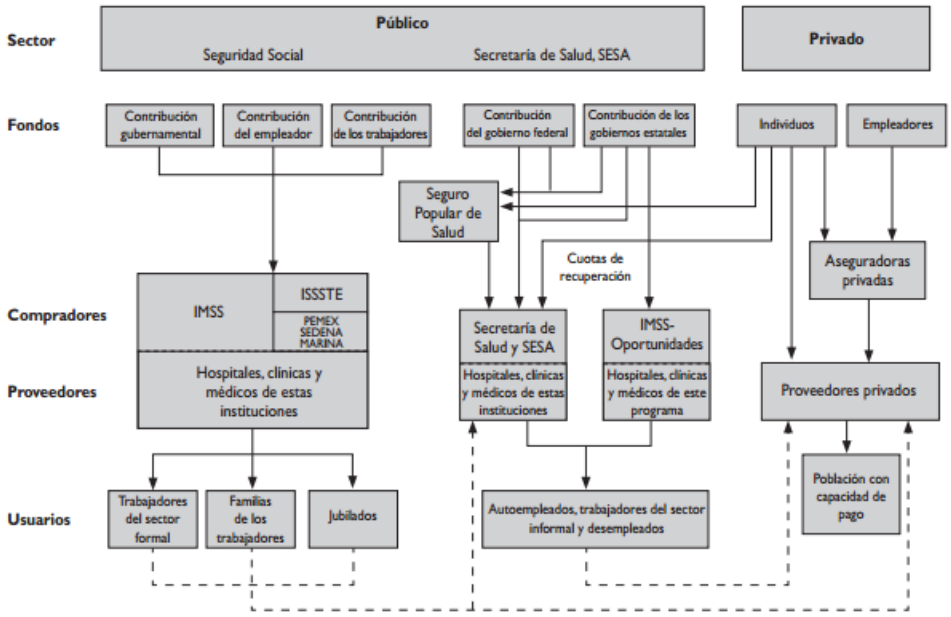
facilities of these institutions, which have their own staff. The SPS is financed with resources from the federal government, state governments and family quotas, and purchases health services for its affiliates to SS and SESA (and in some cases to private providers). Finally, the private sector is financed with the payments made by users at the time of receiving care and with the premiums of private health insurance, and offers services in private clinics, hospitals and clinics.[16]

Health system in Mexico



According to Article 4 of the Political Constitution of Mexico, health protection is a right of all Mexicans. However, guaranteeing it is the great problem that represents the health system in Mexico.

In the country there are three different groups of beneficiaries of health institutions:

1. Salaried workers, retirees and their families.

2. The self-employed, workers in the informal sector, unemployed and people who are outside the labor market, and their families.

[16] Octavio Gómez Dantés, Octavio Gómez Dantés, *et. al.*, "Sistema de salud de México", *Salud Pública*, número 2, vol. 53, pp. México, 2011, p.221.

4. The population with payment capacity.

The health system in Mexico expresses significant lags in three central indicators: equity, quality and financial coverage. In addition, it is also characterized because it is strongly segmented, which means that the right to health is not guaranteed for the entire population. The public health cat has been concentrated in the population affiliated with social security, that is, those who access the health services of the IMSS or ISSSTE or PEMEX.

According to the Bank of Mexico, total health expenditure is the sum of public and private spending on health. It covers the provision of health services (preventive and curative), family planning activities, nutrition activities and emergency assistance designated for health, but does not include the provision of water and sanitation services.[17]

The performance of the Health System in Mexico during the last years can be characterized through two central and confluent processes: fragmentation and the deterioration of the quality of its services derived from the systematic and progressive reduction of public expenditure on the subject:

• The fragmentation of the health system and progressive minimization of the services provided to the open population.

• The decrease in the quality of services.

This process of decreasing public spending on health has its counterpart in the implementation of mechanisms for selective privatization of health services, because the alternative of leaving health services in the hands of private individuals focuses primarily on those services that, due to their intrinsic cost or the purchasing power of its recipients, are more profitable.

In contrast, those unprofitable services that are intended for the population with few resources that in most cases are part of the informal sector, continue to be considered a responsibility of the State but with a tendency to progressively and sharply restrict resources assigned to them and the services they include.[18]

The indicators of a nation's health status are, to a large extent, a reflection of its level of development. According to the OECD, in 2012, total spending on health in Mexico represented 6.2% of its GDP, this percentage is among the lowest of the OECD countries

[17] Banco Mundial, http://datos.bancomundial.org/indicador/SH.XPD.TOTL.ZS
[18] Alejandro Cerda García, México: "El derecho a la salud" en Helena Gardeazábal (coord.), Derecho a la salud. Situación en países de América Latina, ASOCIACIÓN LATINOAMERICANA DE MEDICINA SOCIAL, p. 152.

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(only above Estonia and Turkey) and very below the average of the OECD countries of 9.3%.

As a result of a large expansion in health coverage for the poor and the uninsured that began in 2004, public participation in health care financing in Mexico has increased by around 10 percentage points to reach 50. % in 2012. However, this rate remains one of the lowest among the OECD countries (where the average is 72%), and about half of all health spending in Mexico is paid directly by the patients.[19]

According to Medigraphic information from 2011[20], in Mexico, health service providers generate 187 million general consultations, 41 million specialty consultations, 27 million urgent consultations, 1.5 million deliveries, 3.1 million surgical procedures and 4.5 million hospital discharges. In the last three years, more than 4.5 million queries have been granted.

In the first seven months of 2009, public institutions in the health sector made about 1.8 million surgical interventions. In that same year, the registered hospital occupation was 75%.

The main problem of the National Health System in terms of quality is the enormous heterogeneity that exists in this regard among the main providers of services.

In this regard, the percentage of complications of vaginal deliveries in the hospitals of the SESA (Health Services) and the Federal Ministry of Health (0.48%) is 2.6 times higher than the percentage of the IMSS hospitals (Mexican Institute of Social Security) (0.18%).

The percentage of perforated appendages in the hospitals of the SESA and the Ministry of Health is greater than 6% against less than 2% in the hospitals of the IMSS and little more than 3% in the hospital units of the IMSS.

The percentage of readmissions for open cholecystectomies in hospitals under 60 beds of the IMSS is almost 2% versus less than 1.5% in the hospitals of the Ministry of Health.

The percentage of pneumonia complications in patients aged 60 years and over amounts to almost 27% in the hospitals of the IMSS, 14% in the ISSSTE hospitals and less than 23% in the hospitals of the SESA and the Ministry of Health. To problems of technical quality should be added the efficiency problems.

[19] Estadísticas de la OCDE sobre la salud 2014 México en comparación, http://www.oecd.org/els/health-systems/Briefing-Note-MEXICO-2014-in-Spanish.pdf
[20] Gerardo Ricardo Zurita Navarrete, *Op. Cit.,* p. 42.

The average length of stay for inguinal hernioplasty in hospitals with more than 120 beds in the IMSS is 1.5 days versus 2.6 days in the hospitals of the SESA and the Ministry of Health.

The average number of days for appendectomies in hospitals under 60 beds of the IMSS is 6.5 days against 3 days in the hospitals of the SESA. The average of surgeries per operating room in the IMSS is almost 4 against 2.2 in the Ministry of Health and 1.9 in PEMEX.

There are also important variations in interpersonal quality indicators. According to the ENSA Nut 2006, the average waiting time in the IMSS is 90 minutes, compared to less than 30 minutes in the private sector units. The percentage of deferred surgeries is 20% in the ISSSTE, 18% in the IMSS, 18.2% in the Ministry of Health and 13% in the IMSS.

The main reasons for suspension of surgeries are the lack of supplies, operating rooms and medical personnel. The users of the services of the Ministry of Health are those that best qualify the quality of the food and the cleaning of the facilities.

5. The human right to health in Mexico and health security

The concept of the right to health protection in Mexico has been transformed over the years. In short, this right was conceived initially as a religious question or as a mere charity; Subsequently, based on the Reformation movement, the Mexican State was assumed to be solely responsible for compliance, but under a purely individualistic aspect; finally, the revolution of 1910 and the progressive ideas of the constituent of 1917, transformed this conception by granting the right to health its social character, by pointing out to the Congress of the Union faculties in the matter.[21]

The right to health is enshrined in the Political Constitution of Mexico in the fourth section of article 4:

Everyone has the right to health protection. The Law will define the bases and modalities for access to health services and will establish the concurrence of the

[21] EL DERECHO CONSTITUCIONAL A LA PROTECCIÓN DE LA SALUD. Su regulación constitucional y algunos precedentes relevantes del Poder Judicial de la Federación en México, PARTICIPACIÓN DE LA SEÑORA MINISTRA OLGA SÁNCHEZ CORDERO DE GARCÍA VILLEGAS, EN EL SIMPOSIO INTERNACIONAL "POR LA CALIDAD DE LOS SERVICIOS MÉDICOS Y LA MEJORÍA DE LA RELACIÓN MÉDICO PACIENTE", CELEBRADO EN EL AUDITORIO JAIME TORRES BODET DEL MUSEO NACIONAL DE ANTROPOLOGÍA E HISTORIA EN LA CIUDAD DE MÉXICO, EL 9 DE OCTUBRE DE 2000, www.scjn.gob.mx/conocelacorte/ministra/EL%20DERECHO%20CONSTITUCIONAL%20A%20LA%20PROTECCION%20DE%20LA%20SALUD.pdf

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Federation and the federal entities in matters of general health, in accordance with the provisions of section XVI of article 73 of this Constitution.[22]

From the reading of said paragraph, it follows that there must be concurrence between the Federation and the Federative Entities to enforce the right to health. Which responds not only to a healthy federalism, but also to a real need and a fundamental interest of Mexicans to ensure that all instances of government intervene in its concretion, since without the concurrence of both instances (federal and state) the health action would be entirely ineffective.

Likewise, it must be said that a harmonious interpretation of the Constitution allows us to infer that the municipalities can also participate in this task, since clause i), section III of article 115 of the Constitution grants the possibility of them taking charge of the services public bodies determined by state legislatures.[23]

The right to health protection as an authentic constitutional guarantee, in addition to article 1, recognizes in its first and second section that the right to health is a human right recognized and enshrined in the Constitution:

In the United Mexican States, all persons shall enjoy the human rights recognized in this Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection, the exercise of which may not be restricted or suspended, except in the cases and under the conditions that this Constitution establishes. The norms relating to human rights shall be interpreted in accordance with this Constitution and with international treaties on the subject, always favoring people with the broadest protection.[24]

The right to health protection in addition to finding its specific content in the 4th Constitutional article, also the secondary legislative provisions, regulates and extends the contents of the right to health protection constitutionally enshrined.

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[22] Constitución Política de los Estados Unidos Mexicanos, http://www.dof.gob.mx/constitucion/marzo_2014_constitucion.pdf

[23] EL DERECHO CONSTITUCIONAL A LA PROTECCIÓN DE LA SALUD. Su regulación constitucional y algunos precedentes relevantes del Poder Judicial de la Federación en México, PARTICIPACIÓN DE LA SEÑORA MINISTRA OLGA SÁNCHEZ CORDERO DE GARCÍA VILLEGAS, EN EL SIMPOSIO INTERNACIONAL "POR LA CALIDAD DE LOS SERVICIOS MÉDICOS Y LA MEJORÍA DE LA RELACIÓN MÉDICO PACIENTE", CELEBRADO EN EL AUDITORIO JAIME TORRES BODET DEL MUSEO NACIONAL DE ANTROPOLOGÍA E HISTORIA EN LA CIUDAD DE MÉXICO, EL 9 DE OCTUBRE DE 2000, www.scjn.gob.mx/conocelacorte/ministra/EL%20DERECHO%20CONSTITUCIONAL%20A%20LA%20PROTECCION%20DE%20LA%20SALUD.pdf

[24] CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, Última reforma publicada DOF 07-07-2014, http://www.diputados.gob.mx/LeyesBiblio/htm/1.htm

The General Law of Health in its article 2do establishes the purposes of the right to health protection:

> The right to health protection has the following purposes:
> I. The physical and mental well-being of man to contribute to the full exercise of his abilities;
>
> II. The prolongation and improvement of the quality of human life;
>
> III. The protection and enhancement of values that contribute to the creation, conservation and enjoyment of health conditions that contribute to social development;
>
> IV. The extension of solidarity and responsible attitudes of the population in the preservation, conservation, improvement and restoration of health;
>
> V. The enjoyment of health and social assistance services that effectively and timely meet the needs of the population;
>
> VI. Knowledge for the proper use and utilization of health services, and VII. The development of teaching and scientific and technological research for health.[25]

The following minimum criteria of the right to health are found in the General Health Law:

a) Article 35 establishes that public health services must be provided under the criteria of universality and gratuity.[26]

b) Article 25, which must guarantee the quantitative and qualitative extension of services, preferably to vulnerable groups.[27]

c) Article 36 indicates that the recovery fees that may be collected should take into account the cost of the services and the socioeconomic conditions of the users, based on principles of social solidarity and exempting users who lack resources to cover them or that are the zones of less economic and social development of the country.[28]

[25] LEY GENERAL DE SALUD, http://www.salud.gob.mx/unidades/cdi/legis/lgs/LEY_GENERAL_DE_SALUD.pdf
[26] *Ídem.*
[27] *Ídem.*
[28] *Ídem.*

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d) Article 6 establishes that the National Health System must provide services to the entire population and improve the quality thereof, giving priority to preventive actions.[29]

e) Article 77 Bis 1 establishes that all Mexicans have the right to be incorporated into the Social Protection in Health System in accordance with article four of the Political Constitution of the United Mexican States, regardless of their social status. In addition, that social protection in health is a mechanism by which the State will guarantee effective, timely, quality access, without disbursement at the time of use and without discrimination to medical-surgical, pharmaceutical and hospital services that comprehensively meet health needs.[30]

In this sense, the secondary legislation of the right to health, has an organic character that does not configure real prerogatives of citizens required by the State. In this regard there are some criteria issued by the Judicial Branch of the Federation[31]:

The right to health protection has been interpreted by the Judicial Branch of the Federation as a fundamental right that finds its consecration at the constitutional level and its specific content in secondary regulation. Social rights are norms, and as such they must have binding effects for the obligated subjects, among which, of course, are the public authorities.

In such a way that the right to health as a human right can not be understood without the guarantee of sanitary security. Which includes prevention and excellent care, and this action is directly proportional to the participation and commitment with politicians in the distribution of resources.[32]

The right to health protection has, among other purposes, to ensure the enjoyment of health services and social assistance that meet the needs of the population, and that health services are understood as actions aimed at protecting, promoting and restore the

[29] *Ídem.*
[30] *Ídem.*
[31] PARTICIPACIÓN DE LA SEÑORA MINISTRA OLGA SÁNCHEZ CORDERO DE GARCÍA VILLEGAS, EN EL SIMPOSIO INTERNACIONAL "POR LA CALIDAD DE LOS SERVICIOS MÉDICOS Y LA MEJORÍA DE LA RELACIÓN MÉDICO PACIENTE", CELEBRADO EN EL AUDITORIO JAIME TORRES BODET DEL MUSEO NACIONAL DE ANTROPOLOGÍA E HISTORIA EN LA CIUDAD DE MÉXICO, EL 9 DE OCTUBRE DE 2000,
https://www.google.com.mx/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CCYQFjAC&url=https%3A%2F%2Fwww.scjn.gob.mx%2Fconocelacorte%2Fministra%2FEL%2520DERECHO%2520CONSTITUCIONAL%2520A%2520LA%2520PROTECCION%2520DE%2520LA%2520SALUD.pdf&ei=uTT3VK3sJpb_yQTX_oGoBw&usg=AFQjCNFun2ALJ0aftGDkC29c_VGgXjsV8Q&sig2=e40XRQzk_-D0A2Infx5BKg&bvm=bv.87519884,d.aWw
[32] Loyo, M. & Díaz, H. (2009). *"Hospitales en México"*. En Revista Cir Ciruj, Volumen 77, pp. 497-504.

health of the person and the community, which is compatible with several international human rights instruments.

Conclusions

• The Mexican State must guarantee the right to health to the greatest extent possible according to the available resources, even when they are scarce, but must seek to fulfill their obligations of respect, protection and realization of the human right to health. For this, it is necessary to strengthen the competencies of health professionals in relation to knowledge not only of their subject matter and the expertise to apply it, but also of the knowledge of the application of international human rights instruments, mainly in the context of efficiency and quality of patient care.

• The human right to health cannot be understood without the guarantee of health security. Which includes prevention and excellent care. The legal framework of the human right to health is the basis for: a) unifying strategies that improve the health of the poorest and most excluded social groups; b) improve equity in health; c) clarify the accountability and responsibilities of the health systems and d) evaluate compliance with the recommendations of the Mexican State.

• The right to health is part of the right to human development and has a double dimension: it is a right of Mexican social constitutionalism for the protection of health, and a right of solidarity, because currently, health is an international problem.

• The main problem of the health system in Mexico in terms of quality is the enormous heterogeneity that exists between the main providers of services. Therefore, the greatest challenge is to look for alternatives to strengthen their integration, in such a way that a common package of benefits is guaranteed to all people, the high transaction costs inherent in a segmented system are reduced and the universal exercise is finally achieved. equality of the right to health protection.

• Good medical practice is due to well-equipped health centers, sufficient medical staff to care for patients, excellent medical training of health professionals and decent wages. However, in Mexico, the fundamental problem lies in the increase in population without the proportionate medical services increasing proportionally. The number of patients that go to

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the public sector for medical attention and the number of consultations require that they be of short duration, this limits the possibility of establishing a cordial doctor-patient relationship. The lack of time for the medical attention of each patient in a particularized way can cause the doctor to act in a reckless, negligent or erroneous act.

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