

Editorial

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On the presidential sanction of the “Statutory Health Law” in Colombia

There is nothing more appropriate and pertinent than a public university, and the Faculty of Medicine of the National University of Colombia especially, to deal with topics that are central to the life of the country, particularly when these topics involve themes so sensitive as health, wellness, equity, the rights of citizens, the obligations of the State, justice, and service to society.

On the 16th of February, 2015, the President of the Republic, Dr. Juan Manuel Santos, sanctioned what is referred to as the Statutory Health Law. Though this act is highly significant, we ought now to recognize the wisdom of the Constitutional Court when, upon reviewing the law proposed by the National Government in June of 2013 and approved by the Congress of the Republic, not only declared its conditional constitutionality in May of 2014 but also pronounced Sentence C-313 in October of 2014, which surpasses and transcends prevailing conceptions in Colombia’s current health system.

It is worth recalling that the Statutory Law, which was originally proposed by the government, intended, among other things, to subordinate the right to health care to the fiscal sustainability of the system and to limit the writ of injunction as a mechanism for protecting these rights. Furthermore, the provision of services under this proposal continued to be restricted to those who could demonstrate their status as right-holders and not, as ought to be the case, to all citizens who, as citizens of a nation, are subjects with rights. The aforementioned proposal did not modify in a fundamental way the problems with insurance and intermediation that have caused such harm to the system by permitting moneys specifically set aside for health care to be diverted toward other purposes. Indeed, this intermediation represents an undue transmission of the obligation of the State to guarantee the right to healthcare to groups with economic interests that are other than those of the common good.

The Honorable Constitutional Court consecrated the fundamental right to health in their sentence, an unprecedented act in Colombia’s recent history. By doing so, the Court

understands that it is not only a question of regulating the provision of a few specific services but, rather, that it also is a question, no more no less, of adequately legislating in order to guarantee a fundamental right to all citizens.

Likewise, the Court explicitly acknowledged concepts that are wide and recognized in Public Health that deal with social, economic, environmental, and labor-based determiners—not to mention the merely biological ones— of health when it expressed :

“Health ought not to be understood exclusively as a faculty enjoyed from having a certain set of biological conditions that permits human existence, since this guarantee encompasses a wide range of socio-economic factors that promote conditions at the mercy of which individuals may lead healthy lives and extends this right to basic determining factors of health, such as food, nutrition, housing, access to clean drinking water and adequate sanitary conditions, safe and healthy working conditions, and a healthy environment”.

When we understand the reach of this declaration, we see that inter- and cross-sector work in the organizations of the State is necessary in order to fully achieve health promotion and preservation.

What is more, the Honorable Court took the Resolution of the UN Committee on Social, Economic, and Cultural Rights into consideration when they referred to the “right to the highest attainable standard of health”. This qualifies the status of health and, of course, brings with it implicit obligations for the State to offer the necessary social, economic, educational, work, cultural, environmental, and sanitary conditions to achieve the “highest attainable standard of health” of the citizens.

The result of the above is that the sentence of the Court makes the existence of appropriate conditions, equipment, and infrastructure for high quality and high complexity health care provision obligatory when it considers that “not only

should the existence of services, technologies, and institutions be guaranteed, but that of facilities, establishments, goods, services, technologies, and the necessary conditions for reaching the highest standard of health should be as well". In addition, the Court pointed out that exclusions in service provision should be demonstrated exhaustively. Therefore, they may not be the object of fanciful interpretations by agents of the health system.

Parallel to this, the body prohibited administrative authorizations for emergency care and clarified that this should not be limited to initial emergency care. In other words, patients that seek out emergency care must be offered integral and decisive attention, without administrative authorizations that constitute a barrier to access impeding this.

With regard to the fiscal sustainability of the system proposed in the government law as a requirement to be able to guarantee health rights, the sentence of the Court determined that fiscal sustainability may not limit the guarantee of the right or to service provision and that public benefit should take precedence as an evaluative criterion for public hospitals. Too late we find agreement between the supreme objectives of any health system—to educate, promote and maintain health; to provide quality, timely, and pertinent care for health recovery; to avoid or limit the consequences of illness; to rehabilitate and reintegrate the patient into their social group—and the way that the profitability of the institutions of the system are measured. Too late does financial profitability cede to the reason for being of a health system.

As for the writ of injunction, the Honorable Court sustained it as a mechanism that aids in guaranteeing the right and, with regard to medications, in guaranteeing control starting with production.

Of great importance for the medical profession and other health professions is the fact that the Court backed physicians' autonomy to make decisions about the diagnosis and treatment of their patients and considered it in line with the constitution to administer punishment to practices that limit professional autonomy. The professional autonomy, largely lost to "managed health care"—perhaps better called "intermediated health care" generated by Law 100 of 1993—is recovered with this ruling. As a consequence, the health professions will be responsible for regulating themselves, as they have done for centuries. It is time to return from the corporate ethics of managed health care to the Hippocratic ethics that put needs, expectations, and patient and family request before financial aspects related to the profitability of the system. After all, physicians and medical personnel should have the interests of their patients—not the intermediaries—first and they must maintain their professions as professions, not as trades. At this historic time, it is of vital importance to join forces so that the norms that regulate the Statutory Health Law might constitute a true structural reform of Colombia's health system, transforming it into the guarantor of the "fundamental right to health".

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