

The Right of the Elderly to Health Care Between Jordanian Legislations and International Standards

*Shatha Ahmad Al-Assaf**

ABSTRACT

This study focuses on the elderly's right to health care in Jordanian legislations and the extent to which it corresponds to International Standards through highlighting the importance of this right to the elderly, then critically analyzing its various aspects in Jordanian legislations concerning the availability, accessibility, and acceptability of the health care to the elderly. This study finds the necessity to amend the Jordanian Constitution to guarantee the right to access free health care, the arguent need for promulgating the elderly's rights law, and the need for amending several Jordanian legislations in compliance with the international standards.

Keywords: Human Rights, Right to health care, the elderly, Jordanian legislations, International standards.

Introduction

The elderly's rights attracted worldwide attention especially the right to health care which brought to light the need to remove numerous obstacles and to overcome various challenges that prevent the elderly from enjoying this basic right. The right to health care is considered as the most important right to the elderly because of their increased need for sufficient health care owing mainly to the physiological and psychological changes they are exposed to in old age.

Therefore, the international human rights conventions have been concerned about the right to health care; further, the more recent conventions contain explicit provisions for the elderly's health care. Consequently, this attention has been reflected in domestic legislations.

The importance of this study is demonstrated through comparing Jordanian legislations which regulate the right of the elderly to health care with international standards; in order to find out the extent to which Jordanian legislations are complied with international standards and how it should be enhanced in protecting the right of the elderly to health care.

This study aims to highlight the importance of the right to health care especially for the elderly. It also attempts to outline of provisions of international conventions and general comments which protect and regulate the right to health care in general, and for the elderly, in particular. Furthermore; this study is intended to shed the light on the sufficiency of Jordanian legal regulation of the right of the elderly to health care and its compatibility with international standards.

Hence, this study revolves around the following Questions: Are the provisions of Jordanian legislations adequate to ensure and guarantee the enjoyment of the right to health care for the elderly as required by International standards? and to which extent are such legislations compatible with these standards?

In order to tackle this question, the study will adopt descriptive, analytical and comparative methods by analyzing Jordanian legislations concerning the elderly's right to health care and various aspects to find out their compatibility with the international standards.

1. The right of the elderly to health care: Concept and importance

There is an essential need to clarify the concept of the right to health care through reviewing the definitions of this right, and then to illustrate the great importance of the right to health care for the elderly.

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1.1 Concept of the right to health care

Health is defined in the preamble to WHO Constitution as “a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity”⁽¹⁾. The WHO Constitution considers the enjoyment of the highest attainable standard of health as one of the fundamental rights that should be equally guaranteed to every human being⁽²⁾.

On the other hand, Health Care is the instrument that generates health, so it is defined as any type of services that is provided by professional which has an impact on health status. The right to health care empowers right holders through providing goods and services which assist the achievements of health obligate the state to ensure access to them. Accordingly, the right to health care is defined as “the right to a basic minimum of health care necessary to function in society, making the right to health care a welfare right”⁽³⁾, it is also defined as “the right to resources, goods, services and conditions that are necessary in order to ensure the best attainable health standard”⁽⁴⁾.

The researcher finds the second definition is entirely clearer than the first definition; because it is focused and emphasized the essence of the right, and it isn't limited to goods and services, indeed it extends much further in terms of scope through inclusion of resources and conditions that are necessary to ensure best attainable health standards.

The right to health care is described as one of the basic human rights because ensuring the proper implementation of this right is so essential for exercising other rights⁽⁵⁾.

1.2 The importance of the right to health care for the elderly

The right to health care is especially important for the elderly; therefore, it is extremely necessary to guarantee and ensure the enjoyment of this right taking into consideration the physical and psychological changes that occur while aging.

Changes that come with aging include the reduction of cerebral cortex activity, the formation of neural processes torpidity, weakness of memory, and the slowing-down of psychic reactions⁽⁶⁾. Nevertheless, ageing doesn't necessarily entail the incidence of infections and diseases⁽⁷⁾.

There are several issues to be taken into account when discussing the elderly medical conditions, the most important of which are high prevalence and complications of diseases, high vulnerability to the risks of chronic diseases, high percentage of disabilities resulting from these diseases and the urgent need to rehabilitate them⁽⁸⁾, weak disease resistance, vulnerability to diseases, longer period of healing, and other issues regarding medicine effectiveness⁽⁹⁾.

Many serious challenges are facing health care delivery to the elderly, most particularly: the lack of awareness of their relatives and caregivers about their diseases, suffering from inadequate care, non-compliance with periodic medical examination, inability to afford medical treatment costs, and lack of geriatric specialists⁽¹⁰⁾.

The importance of the right to health care has been obviously reflected in international conventions. Consequently; the international concern of the right to health in general and for the elderly in particular has been reflected in domestic legislations of states parties of international conventions including Jordan. It is worth noting that there is no international convention for the elderly's rights, and there is no Jordanian law for senior citizens as yet.

This study, first of all, will discuss the international standards of the right to health care in general and the right of the elderly to health care in particular; and then it will review the Jordanian legislations that regulate the right of the elderly to health care to find out to which extent such right complies with international standards.

2. International standards on the right of the elderly to health care

A number of international conventions and general comments recognize standards related to the right to health care in general, and for elderly in particular, including international conventions which provide various provisions concerning the right to health for vulnerable groups such as women and disabled persons. In addition, there are non-binding international instruments concerning the right of the elderly to health care. Hence, these international standards will be discussed subsequently in this study.

2.1. Covenant on Economic, Social and Cultural Rights

The right to the highest attainable standard of health, both physical and mental has been recognized by the states parties to the International Covenant on Economic, Social and Cultural Rights as reflected in Article 12/1 of the Covenant.

In order to achieve the full realization of this right, the states parties shall take actions which include prevention, treatment and control of epidemic, endemic and occupational diseases, and provide medical services in cases of sickness⁽¹¹⁾. Jordan is committed to take the aforementioned actions due to the Covenant which Jordan ratified in 1975⁽¹²⁾.

International Covenant on Economic, Social and Cultural Rights obliged states parties to guarantee the rights under the covenant. The right to the highest attainable standard of health shall be exercised equally without any kind of discrimination, such as race, sex and religion⁽¹³⁾.

Taking into account the implementation of this provision by developing countries parties, the covenant authorizes these countries to decide to what extent they can guarantee economic rights to the non-nationals⁽¹⁴⁾. In addition, the covenant affirmed the commitment of states parties to ensure the equal enjoyment of men and women of the rights enshrined in the covenant⁽¹⁵⁾.

The General Comment, concerning the right to the highest attainable standard of health specified the essential and interrelated elements of the right to health, these elements are availability, accessibility, acceptability and quality.

The first essential element of the right to health, as noted in the General Comment, focused on "Availability", which means that health care facilities, programs, goods and services should be adequately facilitated, including hospitals, clinics, essential drugs, and medical as well as professional personnel who receive competitive salaries at the domestic level⁽¹⁶⁾.

The second element is "Accessibility" which has four dimensions. The second dimension is called economic accessibility which is based on the concept that health facilities and services, whether publicly or privately provided, should be affordable for all, and it states that payment for health care services has to be based on the fundamental principle of equity⁽¹⁷⁾.

According to the General Comment No. (14) concerning the right to the highest attainable standard of health, the physical accessibility is one of the main dimensions of accessibility which requires health facilities, goods and services to be reachable physically and safely especially for vulnerable groups such as the elderly. Furthermore, accessibility involves the access to building for disabled persons adequately⁽¹⁸⁾.

The General Comment also affirm that the right to health facilities, goods and services means the creation of conditions to assure all medical services in physical or mental sickness which includes the equal and timely access to health services including preventive, curative, rehabilitative health services, regular screening programs, adequate treatment of diseases injuries, disabilities and mental health treatment⁽¹⁹⁾.

The third element is "Acceptability", which means that all health services and facilities must respect medical ethics and be appropriate culturally, sensitive to life cycle and gender requirements. It should also be designed to improve health status and confidentiality⁽²⁰⁾.

General Comment concerning the economic, social and cultural rights of older persons noted the necessity of taking into account the recommendations issued in Vienna International Plan of Action on Ageing which provided comprehensive guidelines to health policy to maintain the elderly's health including prevention and rehabilitation. It further highlighted the importance of maintaining health for the elderly through investments during the life span by adopting healthy lifestyles and regular checks⁽²¹⁾.

A new concept of healthy ageing that based on functional ability of the elderly instead of the absence of diseases was emphasized in the Global strategy and action plan on ageing and health which was adopted by World Health Assembly⁽²²⁾. Preventive care services are necessary to improve the individual's health and to decrease the treatment expenses⁽²³⁾, also to relieve the pressure on health care services and to enable them to benefit from the optimal use of these services⁽²⁴⁾. Therefore, it is so important to develop health preventive strategies and policies and to promote these policies through legal regulations to reduce the growing numbers of older patients⁽²⁵⁾.

The General Comment on Persons with Disabilities affirm that the States parties to the International Covenant on

Economic, Social and Cultural Rights are committed to ensure that disabled persons are provided with medical care in the same level and within the same system in an equal position with other members of society. The right to health for disabled persons involves the right to have access to medical and social services such as orthopedic devices and rehabilitation services to enable them to become independent in the optimum level in a way that maintains respect for their rights and dignity⁽²⁶⁾.

2.2. Convention on the Rights of Persons with Disabilities

According to the convention on the Rights of Persons with Disabilities, persons with disabilities have the right to enjoy the highest attainable standard of health equally with others without any discrimination on the basis of disability. States parties to the convention are obliged to take all adequate measures to ensure access to health services for persons with disabilities. In addition, these states are committed to provide health services which are necessary to persons with disabilities such as early identification, intervention and services, aiming at minimizing and preventing more disabilities especially for older persons⁽²⁷⁾.

The increased attention to the right of the disabled elderly to health care, especially those with motor disabilities, is due to their need for more health care services than others because of the medical conditions causing the disabilities and their direct effect. For this reason, ensuring the disabled elderly access to health care has become a priority⁽²⁸⁾. The elderly with physical disabilities face many barriers to access health care services such as waiting in long queue lines. Moreover, the elderly who suffer from visual impairment or hearing loss will face communication barriers impeding their access to health care services⁽²⁹⁾. Such issues should be figured out to avoid negative effects on the elderly health and the increased costs of health care⁽³⁰⁾.

2.3. The Convention on the elimination of all forms of discrimination against women

The Convention on the elimination of all forms of discrimination against women emphasize that states parties must ensure access to health care services equally for both women and men and eliminate discrimination against women in health care field by taking all needed measures⁽³¹⁾. Jordan ratified this convention in 1992⁽³²⁾.

The General Recommendation No. 27 on older women and protection of their human rights highlighted issues concerning health care of older women such as limited or lack of access to health care services for conditions and diseases like diabetes, heart diseases, cancer and Alzheimer. Moreover, many older women are excluded from state funded health insurance because they work for the informal sector or provide unpaid care; consequently, they have not contributed to health care schemes, and many of them are not covered by private health insurance either⁽³³⁾.

The General Recommendation also came up with a set of important recommendations concerning health care for older women including the commitment of states parties must be committed to adopt health care policy to ensure accessible and affordable health care to older women⁽³⁴⁾.

2.4. Arab Charter on Human Rights

Arab Charter on Human Rights urged states parties to recognize the right to enjoy the highest attainable standards of health, whether physical or mental, and citizens' right to enjoy free services concerning basic health care⁽³⁵⁾.

States parties to the Arab Charter on Human Rights committed themselves to ensure the right to access medical facilities equally without any kind of discrimination. Among the most important measures was the states parties' commitment to guarantee easy and free access to medical centers providing these services irrespective of geographical location or economic condition⁽³⁶⁾.

It is noted that the Arab Charter on Human Rights has recognized the right to enjoy the highest attainable standards of health; but unfortunately with distinction between citizens and residents concerning free basic health care services⁽³⁷⁾.

2.5. Non-Binding international instruments

There are several non-binding international instruments concerning the elderly's rights were issued such as the United Nations Principles for older persons in 1991 which ensure the first principle under the title of "independence" stating that

the elderly should have access to adequate health care through providing provision of income, community and family support⁽³⁸⁾.

One of the main principles also is that the elderly should have access to health care in order to maintain or regain physical, mental and emotional wellbeing in the optimum level and to protect them from illnesses or delay onset of them⁽³⁹⁾.

In addition, it has been emphasized according to the United Nations principles for older persons that the elderly should be able to enjoy the right to make decisions concerning their care when they are residing in any care or treatment facility⁽⁴⁰⁾.

Toronto Declaration on the Global Prevention of Elder Abuse highlighted the important role of primary health care providers as they regularly deal with elder abuse cases. The declaration calls countries to develop structures specially health services and legal protection to prevent and respond to elder abuse⁽⁴¹⁾.

One of the most important issues that must be highlighted is elder abuse, it is defined by The World Health Organization (WHO) as “a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person”⁽⁴²⁾.

After reviewing the international standards concerning the right of the elderly to health care, it is worth noting that although there are many non-governmental organizations calling for the need to issue a UN Convention on the rights of older persons; meanwhile, the UN General Assembly Resolution (65/182) on 21 December, 2010 established the United Nations Open-Ended Working Group on strengthening the protection of the Human Rights of older persons⁽⁴³⁾.

3. The right of the elderly to health care in Jordanian legislations

Several Jordanian legislations regulate the right of the elderly to health care, noting that there is no law on the elderly's rights. This study will discuss the various aspects in Jordanian legislations concerning the availability, accessibility, and acceptability of the health care to the elderly, along with the relation between elder abuse and health care, in order to find out the extent to which the Jordanian legislations is corresponds to international standards.

3.1. Availability of health care for the elderly

Jordanian Constitution in Article (6/5), after constitutional amendments in 2011, stipulates that the law shall protect motherhood, childhood and the elderly; and shall provide care for the youngsters and those with disabilities, and shall protect them against any abuse and exploitation.

This provision was added to Jordanian Constitution in constitutional amendments of 2011, the constitutional legislator pointed lately the importance of family as the basis of society; and called for preserving its legitimate entity and strengthen its ties and values by means of law⁽⁴⁴⁾.

The researcher believes that the right of the elderly to health care can be implied from this article; particularly because the health care is the most important factor in ensuring the effective protection to the elderly due to the physical and psychological changes that occur to them while aging.

In Jordanian Public Health Law, the Ministry of Health has committed itself, in coordination with the relevant authorities, to implement programs related to health activities for the elderly and supervise their health centers and institutions⁽⁴⁵⁾.

It is worth noting that the Jordanian Cassation Court upheld the judgment of the Court of Appeal which ordered the Ministry of Health to pay compensation for the heirs; because the damages caused by the failure of the two public hospitals to provide appropriate health care to their testator. Consequently, the Ministry of Health is legally responsible for health and administrative control of public hospitals⁽⁴⁶⁾.

Unfortunately, geriatrics is not recognized as one of the medical specialties by the Jordan Medical Council, let alone the lack of specialist medical geriatricians, which affects the availability of necessary health care for the elderly because unqualified doctors will not be able to deal with the elderly's health care needs.

It should be noted that medical and professional personnel working in the public sector such as doctors and nurses receive competitive salaries in Jordan because they are granted additional indemnities, for example, a first-level doctor is granted 200% of his base salary as indemnities⁽⁴⁷⁾.

The researcher finds that the Jordanian Public Health is not consistent with the General Comment concerning the right to the highest attainable standard with respect to availability of health care for the elderly ; because it emphasizes the implementation of programs related to health activities for the elderly and supervises their health centers and institutions without stressing the need to adequately provide health care facilities, goods and services, including hospitals and clinics staffed with professional personnel who receive competitive salaries at the domestic level.

One of the main issues that should be discussed under availability of health care for the elderly is the long-term care. Long-term care means the delivery of services to those who suffer from limitation in their ability to independently function for a long period. Owing to the adverse consequences of separating between health care and long-term care on meeting the elderly patient's needs, a trend has prominently emerged toward integrating the two kinds of care. This integration, along with institutional changes and training, definitely requires legislative intervention⁽⁴⁸⁾.

Consequently, Long term refers nowadays to a continuous process of medical and social services designed to the benefit of those who suffer from chronic health problems that limit their ability to perform daily activities. Therefore, long-term care services cover broader range of services which are provided by traditional medical providers including physicians and hospitals; facility providers such as nursing homes; formal community caregivers as in home care agencies⁽⁴⁹⁾. In view of the foregoing, the Jordanian legal regulation of nursing homes and home health care will be discussed below.

Jordanian instructions on licensing the elderly residential nursing homes require to license nursing homes buildings to have a health unit with medical supplies required by the Ministry of Health and to have also devices for physical therapy and medical cabinet⁽⁵⁰⁾. Every nursing home according to this instruction needs to have both resident or visitor doctor and nutritionist and to compile a medical and social file for every older person containing all the medical and social information that has been updated on a periodic basis⁽⁵¹⁾.

The Ministry of Social Development is in charge of supervising elderly nursing homes and clubs. Furthermore, the Ministry obliged the elderly nursing homes and clubs under the law to take all necessary procedures to safeguard health and safety of the elderly, and to inform the elderly's relatives in the cases of sickness or getting hurt⁽⁵²⁾.

Lately, licensing home health care agencies was regulated by legal provisions in Jordan by regulation No. 84 of 2016, which required home health care services to include medical treatment, nursing care, occupational therapy, nutrition, speaking and hearing units, and mental health and counselling. All of these services are provided to the beneficiary at his/her residence at his/her the request or his/her parents, guardian, tutor, or the attending physician or medical institution⁽⁵³⁾. Unfortunately, home health care is not covered by governmental or private health care insurance, and it is provided only by private sector which will deprive a lot of the elderly from these services.

The researcher finds that the Jordanian legislations regulating nursing homes and home health care correspond to international trend on long-term care which has been clearly reflected in World Report on ageing and health that paid a considerable attention to this issue and recommended that the priority should be given to enhance physical and mental capacities for older persons throughout their lives, which in turn require changes such as integration in health system and the cooperation of health with social care services to develop the long-term care⁽⁵⁴⁾.

3.2. Accessibility to health care for the elderly

The access of vulnerable people especially the elderly to health care is one of the fundamental issues that should receive significant attention to enable the elderly to fully enjoy their right to health care, with special focus on important matters such as access of the disabled elderly to health care and economical accessibility to health care for the elderly.

3.2.1. Access of the disabled elderly to Health Care Services

Under the Jordanian Law on the Rights of Persons with disabilities the Ministry of Health and the Food and Drug Administration, along with the Higher Council for the Rights of Persons with Disabilities, must include the requirement

for access to health care programs and services for persons with disabilities within policies, strategies and plans⁽⁵⁵⁾. They are also committed to ensure accessibility to hospitals and medical centers of the Ministry and to provide reasonable accommodation for this purpose. Furthermore, the non-governmental medical centers and hospitals are obliged to provide the accommodation and accessibility in order to grant or renew their licenses. The Jordanian Law on the Rights of Persons with disabilities requires the training of the medical and administrative personnel at hospitals to communicate with persons with disabilities to ascertain access to health care services and programs⁽⁵⁶⁾.

The Ministry of Social Development in cooperation with the Ministry of Health in coordination with the Higher Council have to provide physical, psychological and social rehabilitation services as close as possible to the places of residence of persons with disabilities; they are also committed to provide physiotherapy, psychological counseling programs and training on art of mobility to encourage self-reliance skills for persons with disabilities⁽⁵⁷⁾.

It should be noted that persons with disabilities who hold the health insurance card issued by the Ministry of Health are exempted from fees for medical treatment or rehabilitation including surgical operations, medicines and assistive devices such as prostheses and hearing aids⁽⁵⁸⁾.

It is worth noting that one of the most important health care services provided especially for the disabled elderly is rehabilitation which is defined as a facilitative process aiming to enable handicapped persons to become independent and satisfied in their own lives. The increasing number of older persons should lead to expand the role of the rehabilitation professional to meet needs of the elderly. There are many innovative rehabilitation programs such as the programs that contain a health maintenance orientation including rehabilitation services which emphasize social and personal adjustment⁽⁵⁹⁾.

The researcher finds that there is a clear compatibility between Jordanian Law on the Rights of Persons with disabilities and Convention of the Rights of Persons with Disabilities related to taking all measures needed to ensure access to health services for persons with disabilities. In addition, this law is consistent with General Comment No. (5) on Persons with Disabilities which highlighted the importance of rehabilitation services to enable persons with disabilities to become independent in an optimum manner.

3.2.2. Economical Accessibility to health care for the elderly

Most of the elderly have faced financial troubles as a result of cessation of employment; the elderly who receive lower pensions or those who get no pension at all will face serious troubles when they need to access health care services. One of the major determinants of the elderly access to health care is the high costs of healthcare services especially for the elderly suffering from chronic diseases, which need long term care to be treated.

Besides, there are other barriers to access health care such as the cost of the visit, lack of transportation and the transportation fares, especially for those who lives in rural areas since health care services are commonly centralized in major cities⁽⁶⁰⁾.

The right to health care is considered as one of welfare rights which are positive rights require action and expense to provide access to them⁽⁶¹⁾. Consequently, healthcare services should be affordable for the elderly; hence, a domestic system of health insurance for those who can't afford to pay the costs of medical care is an essential matter.

In Jordan, the coverage of individual citizens in health insurance instruction specified the annual contributions to the health insurance fund according to classifications based on age. To afford health care to the elderly, this instruction provided that contributions for those whose ages range from sixty to less than eighty covered under medical treatments item which is in turn listed under the Ministry of Health allocations. As for those who are over the age of eighty their contributions will be covered from public expenditure⁽⁶²⁾.

For Jordanian employees of companies and institutions, annual contributions are fixed by the coverage of employees of any company or institution in health insurance instruction. These contributions are classified on the basis of age, so the employees aged sixty or above have to pay (72) Jordanian dinar and the residual contributions amount of (78) Jordanian dinars; will be covered by public expenditure. Unfortunately, foreigner employees have to pay all the amount of contributions⁽⁶³⁾.

The research believes that Jordanian legislations are not consistent with the Arab Charter on Human Rights that emphasized the free access to medical facilities, also do not comply with General Comment No. 14 on the right to the highest attainable standard of health concerning the economic accessibility which confirmed that health facilities and services should be affordable; because Jordanian legislations provided economical accessibility to health care for Jordanian senior citizens through covering health insurance contributions from the Ministry of Health allocations or public expenditure; in spite of that, Jordanian older employees are obliged to pay about half of the contributions fixed by instruction, and foreigner employees have to pay all the amount of contributions.

3.3. Acceptability of the health care to the elderly

The elderly have the right to take independent and conscious decision concerning medical treatments; however, they are sometimes unable to make this decision due to the effect of diseases or poor state of health affecting their awareness of the potential risk of allowing medical intervention. This matter raises the following question: Does the Jordanian law ensure the elderly right to make decisions about medical treatment, and does it contain any solutions in case the older person becomes unable to express their will?

The Jordanian medical liability law required health services providers to inform patient about available treatment options with the exception of emergency conditions that allow no delay. Also, they must inform the patient of the nature of his/her illness and the degree of seriousness unless his/her interest is otherwise required. Any of his/her relatives or companions shall be notified in the following cases: if his mental state doesn't allow that, if he/she is incompetent or deficient and if his/her health condition doesn't allow him/her to be informed personally or his/her consent can't be obtained⁽⁶⁴⁾.

This law also prohibits health services providers from treating any patient without his/her consent, except in cases where emergency medical interventions and consent can't be obtained for any reason or in which the disease is contagious or is a threat to health or public safety⁽⁶⁵⁾.

Accordingly, there is no provision in Jordanian law obliging patients, especially the elderly, to name the person who shall make the decisions concerning medical intervention in case he/she becomes unable to make them; besides, there is no explicit provision that gives the relatives the right to make these decisions.

The researcher finds that this legislative gap is not commensurate with General Comment on the right to the highest attainable standard of health concerning acceptability of the health care services and facilities which require respect for medical ethics.

In one of the Jordanian judicial decisions the court concluded that medical liability requires that patient should receive care and not to be neglected; besides all medical procedures should be aimed at the absolute interest of the patient and should also be justified with the consent of the patient. If the patient's medical condition doesn't allow him to be informed personally or it isn't possible to obtain the patient's consent, the patient's family will be informed about his/ her illness⁽⁶⁶⁾.

It's worth noting that several countries have legislations addressing solutions for the elderly who aren't able to express their decisions about medical treatment, such as the Russian Federation legislations elderly patient stating the right to decide whether or not to grant consent for medical intervention, but if the elderly patient can't express his/her decision due to health conditions, the right of making the decision will be delegated either to a council of physicians or to an attending physician. Another solution is provided by the civil code of Russian Federation, which states that guardianship agencies can appoint a competent person as a guardian in custodial care form upon the request of the patient, so that custodian can take the decision concerning medical intervention if the patient becomes unable to take this decision⁽⁶⁷⁾.

Another example can be exposed, according to Quebec Civil Code family members of incapable patients are legally authorized to make decisions about health care even if they aren't appointed formally to do so by a court ruling. This code also obligates any person who gives consent or even refuses care for another person to act in the sole interest of the latter taking into account any wishes he/she may have expressed⁽⁶⁸⁾.

3.4. Elder abuse and health care

There are several types of elder abuse such as physical abuse, psychological abuse, sexual abuse, exploitation and neglect⁽⁶⁹⁾. The elderly may be abused by their family members, neighbors, servants or care providers in nursing homes. Unfortunately, most of elder abuse cases are hard enough to detect because the elderly refused to report them due to fear or embarrassment⁽⁷⁰⁾.

Health care providers can notice physical abuse of the elderly through many signs including welts, lacerations, fractures of bones, untreated injuries and overuse or underuse of medication. They can also regard emotional or physical problems which can occur due to emotional abuse such as depression, agitation and suicidal ideation⁽⁷¹⁾. Nevertheless, neglecting the elderly can't be recognized by health care providers until the effects happened, which usually takes a period of time, such as weight loss, except in case the older person suffers from health problems such as insulin-dependent diabetes or heart failure⁽⁷²⁾.

Laws governing elder abuse should be clear; otherwise, it will lead to ineffectively and inefficiently interpret these laws and hence tackling elder abuse cases would not be possible. One of the most important factors that blurs the clarity of these laws is drafting them based on misguided assumptions regarding similarity between elder abuse and child abuse. Another important matter that should be considered while drafting these laws is that there are different types of abuse⁽⁷³⁾.

Jordanian constitution, as already mentioned, affirms the elderly protection by stipulating that the law shall protect the elderly; it shall also provide care for those with disabilities and protect them against any abuse and exploitation⁽⁷⁴⁾. In addition, the Jordanian constitution considers every infringement of rights, public freedoms and the inviolability of the private life a crime punishable by law⁽⁷⁵⁾.

There are relevant provisions in a number of Jordanian laws. This study will discuss the provisions referred to in order to ascertain the extent to which they are commensurate with International Standards.

Under Article (21) of the licensing for elderly nursing homes, instructions require nursing home to take all necessary actions that ensure the elderly's health and safety so that they may not be subjected to abuse or violence.

Obviously, this provision is compatible with United Nations principles for older persons emphasizing, under the dignity principle, that older persons should be free of exploitation and physical or mental abuse⁽⁷⁶⁾.

Another provision is found in the Rights for Persons with Disabilities Law which obliges the Ministry of Health and the Ministry of Social Development in coordination with the Higher Council for the Rights of Persons with Disabilities to prevent violence and run detection programs, along with the ways of reporting violence combined with training for persons with disabilities especially the elderly and their families to do so. Besides, they are committed to train specialized staff to detect violence cases and how to deal with them in the various phases and to provide all kinds of health treatment and psychosocial support services including rehabilitating the victims of violence or abuse, designing and implementing an integrated alternative care program for persons with disabilities victims of violence⁽⁷⁷⁾.

The researcher finds this provision is completely consistent with the Convention on the Rights of Persons with Disabilities which obliged member states to take all necessary measures -especially legislative ones- to protect persons with disabilities from violence, exploitation and abuse, to provide age-sensitive protection services. Besides, it required member states to prevent all forms of violence, abuse and exploitation by ensuring age-sensitive assistance and support for victims, their families and caregivers including how to avoid, recognize and report these cases, and to ensure effectively monitoring facilities and programs designed for them by independent authorities. In addition, states parties are obliged to take all measures to enhance physical and psychological recovery of victims and to promote rehabilitation and social reintegration. Moreover, states parties shall put effective legislations to ensure identifying, investigating and prosecuting abuse cases⁽⁷⁸⁾.

On the other hand, domestic violence protection law required health, educational and social services providers in the public and private sectors to report any domestic violence against persons lacking legal capacity or with reduced legal capacity as soon as they discover it⁽⁷⁹⁾.

The researcher believes that there is a clear compatibility between Domestic Violence Protection Law and Arab

Charter on Human Rights. The charter obligate member states to ensure protection of the family, to prohibit all forms of violence or abuse among its member, and to ensure necessary protection to older persons⁽⁸⁰⁾.

It is noteworthy that the Domestic Violence Protection Law is consistent with the Toronto Declaration on the Global Prevention of Elder Abuse which calls to develop structures specially health services and legal protection to prevent and respond to elder abuse; and underlines the important role of primary health care providers as they regularly deal with elder abuse cases⁽⁸¹⁾.

Conclusions

After reviewing Jordanian legislations and discussing the extent of compliance with international standard, the study traces a number of aspects of non-compliance which can summarized as follows:

1. The right to free access to health care isn't explicitly guaranteed by the Jordanian Constitution, although the Jordanian Constitution refers implicitly to this right, and there is no law on the elderly's rights.
2. Jordan Medical Council doesn't recognize geriatrics as one of the medical specialties leading to the lack of geriatric specialists in Jordan.
3. Jordanian legislations provided economical accessibility to health care for Jordanian senior citizens through covering health insurance contributions from the Ministry of health allocations or public expenditure; nevertheless, Jordanian older employees are obliged to pay about half of the contributions fixed by instruction.
4. Home health care services in Jordan are provided by private sector, and it isn't covered by health insurance, whether by government or the private sector.
5. Jordanian law assures the patients right to be informed about available treatment options and prohibit health services providers from treating them without their consent except in cases provided by law.
6. There is no provision in Jordanian legislations that determines who can make decisions concerning medical intervention if the older patient becomes unable to decide for health reasons. On the one hand, the older patient will be left without any representative who can protect his/her right to health care services; on the other hand, health professionals will hesitate to take any medical intervention to avoid medical responsibility.
7. There is no law in Jordan that makes elder abuse an offence; accordingly, any elder abuse was dealt with under the Jordanian Penal Law.

Recommendations

1. The Jordanian constitution must be amended to explicitly guarantee the right to free access to health care for everyone citizen or resident.
2. There is a serious need to promulgate the elderly's rights law which must include provisions guaranteeing and regulating the right to health.
3. It is necessary to take all needed procedures to recognize geriatrics as one of the medical specialties by the Jordan Medical Council.
4. There is a need to amend Article (13) of instructions on licensing the elderly residential nursing homes of 2013 by requiring every nursing home to provide a resident or visitor geriatric specialist
5. The dire need to cover home health care services by government and private health insurance through the amendment of relevant legislations.
6. It is necessary to amend Jordanian Medical Liability Act to oblige older patient to name a person who will make decisions about medial intervention if he/she becomes unable to do so, and the law should specify the person who will make these decisions in behalf of older patient if he/she is unable to make them such as his/her spouse or adult children or relatives.
7. It is necessary to promulgate law criminalizing elder abuse and set dissuasive penalties besides regulating the reporting of elder abuse especially crimes committed by health care providers.

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حق كبار السن في الرعاية الصحية بين التشريعات الأردنية والمعايير الدولية

شذى أحمد العساف *

ملخص

تتصب هذه الدراسة على حق كبار السن في الرعاية الصحية في التشريعات الأردنية ومدى مواءمتها للمعايير الدولية من خلال تسليط الضوء على أهمية هذا الحق بالنسبة لكبار السن، ثم التحليل النقدي لجوانبه المختلفة في التشريعات الأردنية المتعلقة بتوافر الرعاية الصحية لكبار السن وإمكانية الوصول إليها ومقبوليتها. توصلت هذه الدراسة إلى عدة توصيات من أبرزها: ضرورة تعديل الدستور الأردني لكفالة الحق في الرعاية الصحية المجانية، بالإضافة إلى الحاجة الماسة لإصدار قانون خاص بحقوق كبار السن، وضرورة تعديل العديد من التشريعات الأردنية بما يتوافق مع المعايير الدولية.

الكلمات الدالة: حقوق الإنسان، الحق في الرعاية الصحية، كبار السن، التشريعات الأردنية، المعايير الدولية.

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