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The Road to Universal Health Coverage in Mexico: From Charity to Social Protection in Health

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I. INTRODUCTION

Social rights date back to the late 19th century. The reforms introduced by Otto von Bismarck to laws in Germany that included old age pension, medical care, and occupational accident and unemployment insurance, gave birth to the welfare state.¹ However, the first supreme law of a national state to recognize social rights was the 1917 Mexican Constitution.² Articles 3, 27 and 123 of that particular constitution guaranteed access to education, free when provided by the State; protection of property rights, with a special framework for rural areas and indigenous communities; and basic labor rights, including the right to financial compensation in case of occupational accidents and disease.³ This constitutional platform evolved to provide legal support to, among other things, universal health coverage (UHC) in Mexico, which was achieved a century later.

The history of the Mexican health system in the 20th century is that of the conquest of the universal right to the social protection of health. Health care in Mexico at the turn of the past century was mostly the subject of public charity. It was recognized as an occupational right in the 1917 Constitution and turned into a labor right in 1943 with the creation of the Mexican Institute for Social Security (IMSS, which stands for Instituto

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1. See generally Henry E. Seigerist, *From Bismarck to Beveridge: Developments and Trends in Social Security Legislation*, 20 J. PUB. HEALTH POL'Y 474 (1999).

2. World Intellectual Property Organization, Mex., *Constitucion Política de los Estados Unidos Mexicanos [C.P.]*, (Mex.), available at <http://www.wipo.int/wipolex/en/details.jsp?id=8010> (last visited Jan. 24, 2013).

3. *Constitucion de Mexico de 1917*, Art. 3, 27, 12 (Mex.), available at <http://www.latinamericanstudies.org/mexico/1917-Constitution.htm>.

Mexicano del Seguro Social). Finally, the System for Social Protection in Health (SSPH), established in 2003, created the regulatory and financial conditions to guarantee the universal and effective exercise of the right to the protection of health, which was introduced in Article 4 of the Mexican Constitution in 1983.

In this paper, we analyze the evolution of the Mexican legal framework that culminated in the reforms to the General Health Law of 2003, which created the SSPH and its operative branch, Popular Health Insurance or Seguro Popular. This insurance scheme extended health care coverage with financial protection to all Mexicans citizens in 2012. In the first part, we discuss the nature of social rights, including the right to health care. In part two, we describe the evolution of the contents of the legal instruments (the Constitution, the social security laws and the General Health Law) that supported the transition in Mexico from health care as the subject of charity to health care as a labor right and then as a social or citizen right. In part three, we discuss how the creation of the SSPH established the regulatory and financial conditions to guarantee the exercise of the right to the protection of health. The recent history of the Mexican health system shows that in order to guarantee the justiciability of this right and the financial viability of its effective exercise, in addition to a constitutional framework, certain regulatory and financial instruments are needed.

II. HEALTHCARE AS A SOCIAL RIGHT

Rights are the basic rules about what is allowed of people or owed to people according to some fact, reason, truth, standard or principle.⁴ Human rights, in turn, are those rights that a person has by virtue of his or her humanity.⁵ These rights may exist as natural or legal rights. Natural rights, like the right to life, apply to all people and are independent of the laws of any specific society; they are conferred by God, nature or reason.⁶ Legal rights, such as the right to vote, in contrast, exist by virtue of a society's customs, laws or legislative actions.⁷

Human rights may be classified according to their historic origin in three separate generations.⁸ First generation rights include civil and political

4. Right Definition, DICTIONARY.COM, <http://dictionary.reference.com/browse/right> (last visited Mar. 27, 2013).

5. THE FONTANA DICTIONARY OF MODERN THOUGHT 291 (Alan Bullock et al. eds., 1977).

6. ROGER SCRUTON, A DICTIONARY OF POLITICAL THOUGHT 371-72 (Macmillan 1996).

7. SIMON BLACKBURN, OXFORD DICTIONARY OF PHILOSOPHY 331 (Oxford University Press 1996).

8. ANTHONY J. LANGLOIS, NORMATIVE AND THEORETICAL FOUNDATIONS OF HUMAN RIGHTS 12, 16 (Oxford University Press), available at <http://fds.oup.com/www.oup.com/>

rights. Second generation rights are comprised of economic, social and cultural rights. Finally, third generation rights have been labeled solidarity rights.

First generation rights were the product of the victory of liberalism in the French Revolution and were embodied in the Declaration of the Rights of Man and of the Citizen, and eventually in all constitutional texts of the Western world.⁹ They are the civil and political rights of the Universal Declaration of Human Rights.¹⁰ They protect an individual's freedom from the unfounded intrusion by governments and private organizations, and guarantee one's ability to participate in the civil and political life of the state. They include the right to life, freedom of thought, speech, religion and movement, equality before the law, right to a fair trial, due process, freedom of association, and the right to vote.

Second generation rights are known as economic, social and cultural rights. They include labor rights, right to housing, right to education, and right to health care. They originated in the 1917 Mexican Constitution and the 1919 Weimar Constitution, as well as in the post-World War I constitutions.¹¹ Some of these rights are recognized by the Universal Declaration of Human Rights, but its primary international legal source is the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly in 1966.¹²

There is a crucial difference between first and second-generation human rights related to the participation of the State in their enforcement. In the case of civil and political rights, which protect individual liberty, the participation of the State in their exercise should be limited, and its active participation is only justified if someone transgresses or breaches this liberty. For this reason they are called negative rights.¹³ In contrast, the enforcement of second-generation human rights demands the involvement

pdf/13/9780199540846_chapter1.pdf (last visited Jan. 25, 2013).

9. RHONDA A. CALLAWAY & JULIE HARRELSON-STEPHENS, WHAT ARE HUMAN RIGHTS? in *EXPLORING INTERNATIONAL HUMAN RIGHTS: ESSENTIAL READINGS*, 1-3 (Rhonda A. Callaway & Julie Harrelson-Stephens eds., 2007), available at <https://www.riener.com/uploads/47e2c6b73cc4b.pdf>.

10. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc.A/RES/217(III) (Dec. 10, 1948), available at <http://www.un.org/en/documents/udhr/index.shtml>.

11. NATIONAL CENTER ON HUMAN RIGHTS INFORMATION AND DOCUMENTATION, CLASSIFICATION OF HUMAN RIGHTS 3 available at <http://tandis.odihr.pl/documents/hre-compendium/en/CD%20SEC%203/HRE%20Package%20for%20Schools%20Tajikistan/HRE%20Package%20Textbook%20Tajistkan%20ENG.pdf> (last visited Mar. 27, 2013).

12. See generally UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 993 United Nations Treaty Series (1966), available at <http://www.unhcr.org/refworld/docid/3ae6b36c0.html> (last visited Jan. 25, 2013).

13. See Declaration of the Rights of Man and Citizen, Aug. 26 1789, available at <http://chnm.gmu.edu/revolution/d/295/>.

of the State and a certain level of social and economic development. For these reasons, second generation human rights are considered positive and progressive (they take significant time to implement).¹⁴

Finally, third generation human rights include those that create the contextual conditions for the effective exercise of first and second generation human rights: right to development, right to peace, right to self-determination, right to a healthy environment and right to the participation in humanity's cultural heritage.¹⁵ They are expressed in several documents of international law such as the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment and the 1992 Rio Declaration on Environment and Development.¹⁶ Some countries have established a formal mechanism to safeguard these rights. Salient among them are the New Zealand Parliamentary Commissioner for the Environment and the Hungarian Parliamentary Commissioner for Future Generations.¹⁷

III. THE TRANSFORMATION OF HEALTH CARE INTO A SOCIAL RIGHT IN MEXICO

The right to the protection of health was introduced in the Mexican Constitution in 1983. It was the culmination of a set of legal efforts to guarantee regular access to health care to all Mexicans which began in the second decade of the past century with the enactment of the 1917 Mexican Constitution.

At the turn of the 20th century, health care in Mexico was mostly the object of private or public charity, which is defined as aid given to those in need.¹⁸ The Ministry of the Interior had an office specifically devoted to the surveillance and regulation of this type of activity, the General Directorate for Public and Private Charity (in Spanish, Dirección General de la Beneficencia Pública y Privada).¹⁹ The participation of the

14. See *id.*

15. JORGE CARPIZO, *LOS DERECHOS DE LA TERCERA GENERACIÓN: PAZ Y DESARROLLO* 101 (1993), available at <http://biblio.juridicas.unam.mx/libros/3/1134/6.pdf>.

16. United Nations Environment Programme, Declaration of the United Nations Conference on Human Environment, (June 16, 1972) available at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>; UNESCO, *The Rio Declaration on Environment and Development* (1992), available at http://www.unesco.org/education/nfsunesco/pdf/RIO_E.PDF.

17. See NEW ZEALAND PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT, <http://www.pce.parliament.nz/> (last visited Mar. 27, 2013).

18. Charity Definition, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/charity> (last visited Jan. 30, 2013).

19. JULIO FRENK, *PARA ENTENDER: EL SISTEMA DE SALUD DE MÉXICO* 19 (Nostra Ediciones 2008).

government in the provision of health care, however, was very limited. Its role in the health field was mostly concentrated in the development of public health activities related to disease and environmental surveillance and control.

A major step in the public provision of health care services was the inauguration of Mexico's General Hospital (Hospital General de Mexico) in 1905.²⁰ According to Fernández del Castillo, the construction of this modern public hospital represented an important symbolic leap of Mexican medicine from the 18th to the 20th century, and a setback to the interest groups within the government that supported the idea that state intervention in health should be limited to the development of public health and environmental activities.²¹

Thanks to the public health achievements of the early 20th century (the control of bubonic plague, yellow fever and typhus) and the modernization of clinical medicine, health was recognized as a specific field of government intervention in 1917. That year the first two independent public institutions devoted to health were created: the General Sanitary Council (Consejo de Salubridad General), dependent on the Office of the President of Mexico, and the Department of Public Health (Departamento de Salubridad Pública), an administrative body of the executive power of the federal government, responsible now for all public health activities previously controlled by the Ministry of the Interior.²² The legal basis for the creation of the General Sanitary Council, which had, among others, the capacity to assume extraordinary powers in case of epidemics or natural disasters, was Article 73 of the 1917 Constitution, the same provision regulating the powers of Congress. Health was finally represented in Mexico's supreme law.

Equally important for the purpose of this paper was the introduction of several labor rights in Article 123 of the 1917 Mexican Constitution.²³ These rights, and those rights established in Articles 3 to 27, were the clearest manifestation of the social conquests of the 1910 Mexican Revolution and the first constitutional expression of social rights in history.²⁴ Those sections specifically related to the employer's

20. Sociedad Médica del Hospital General AC, *Historia del Hospital General*, available at <http://www.smlhg.org.mx/?q=es/node/15> (last visited Jan. 25, 2013).

21. See generally FRANCISCO FERNÁNDEZ DEL CASTILLO, *EL HOSPITAL GENERAL DE MÉXICO, ANTECEDENTES Y EVOLUCIÓN* (Instituto para la Organización de Congresos Médicos, Primer Congreso Mexicano de Medicina 1946).

22. MAURICIO ORTIZ, *LA SALUD 41* (Nostra Ediciones 2010).

23. 1917 Constitution of Mexico, Art. 73 (Mex.) available at: <http://www.latinamericanstudies.org/mexico/1917-Constitution.htm>.

24. See Civil and Political Rights Definition, WIKIPEDIA.ORG, http://en.wikipedia.org/wiki/Civil_and_political_rights (last visited Jan. 25, 2013).

responsibility over occupational diseases and accidents, insurance against disability, involuntary work stoppage, sickness and accidents, and insurance on life, though facultative in nature, are considered the “seeds” of social security in Mexico.²⁵ Paragraphs XIV and XV of Article 123, which established health care as an occupational right, stated the following:

XIV: Employers shall be responsible for labor accidents and for occupational diseases of workers contracted because of or in the performance of their work or occupation; therefore, employers shall pay the corresponding indemnification whether death or only temporary or permanent incapacity to work has resulted, in accordance with what the law prescribes. This responsibility shall exist even if the employer contracts for the work through an intermediary.

XV. An employer shall be required to observe, in the installation of his establishments, the legal regulations on hygiene and health, and to adopt adequate measures for the prevention of accidents in the use of machines, instruments, and materials of labor, as well as to organize the same in such a way as to ensure the greatest possible guarantee for the health and safety of workers as is compatible with the nature of the work, under the penalties established by law in this respect.²⁶

The legal foundation related to health insurance as a social security provision is paragraph fraction XXIX, amended in September 6, 1929, that states the following:

XXIX. Enactment of a social security law shall be considered of public interest and it shall include insurance against disability, on life, against involuntary work stoppage, against sickness and accidents, and other forms for similar purposes.²⁷

A few years later, the federal government ordered the construction of the new facilities of the Department of Public Health. It was the first art decó building constructed in Mexico. At the head of its main façade, the motto “Salubrity and Hygiene” was carved in quarry: “the two intellectual roots of public health, the French, salubrité, which makes use of the law to promote health, and the German, hygiene, which makes use of science for the same purpose.”²⁸

In 1937 a new ministry responsible for the provision of health care was

25. Mauricio de la Selva, *La Seguridad Social, El Seguro Social y Sus Realizaciones en México*, 4 CUADERNOS AMERICANOS 50, 74 (1961).

26. 1917 Constitution of Mexico, Art. 123 (Mex.) available at: <http://www.latinamericanstudies.org/mexico/1917-Constitution.htm>.

27. *Id.*

28. MAURICIO ORTIZ, *LA SALUD* 41-2 (Nostra Ediciones 2010).

created, the Ministry of Public Assistance. This ministry took over the duties of the Board of Public Charity (*Junta de Beneficencia Pública*), heir of the General Directorate for Public and Private Charity. In the law project sent to the Mexican Congress the following was stated: “The Mexican State considers that the concept of public assistance should substitute that of charity, since the services that the socially weak individuals demand should aim at their comprehensive development and not only at the satisfaction of their most basic needs.”²⁹

By 1940, Mexico counted on a reasonable set of institutions devoted to public health and health care, and a constitutional statement urging for the construction of a social security system. In fact, between 1921 and 1940, several projects whose purpose was to materialize the text of Paragraph XXIX of Article 123 through the enactment of a social security law were discussed in the Mexican Congress but none was approved.³⁰ It was in the context of a broad process of industrialization and economic growth, stimulated by World War II, that the Mexican Institute for Social Security Law was sanctioned and published in the Official Journal of the Mexican Federation (*Diario Oficial de la Federación*) in 1943.³¹ This law turned health care into a social security right for workers and marked the creation of IMSS.

The original Mexican Institute for Social Security Law had 142 articles divided into ten chapters dealing with the following matters: i) definition of social security as a compulsory public service, establishment of IMSS as the institution in charge of the administration of this insurance scheme, and population subject to affiliation (mainly the salaried population); ii) contributions and responsibilities of employers and employees; iii) insurance against occupational accidents and diseases; iv) insurance against non-occupational diseases and maternity insurance; v) insurance against disability, old age, unemployment, and death; vi) optional insurance and possibility of receiving the benefits of social security in case of sudden unemployment; vii) organization of IMSS; viii) criteria for the construction of IMSS financial reserves; ix) norms to deal with controversies; and x) responsibilities and sanctions.³²

The legal basis for the construction of a national social security system was finally in place. However, most Mexicans lived in rural areas and a

29. Quoted in MAURICIO ORTIZ, *EN LOS SESENTA AÑOS DE LA SECRETARÍA DE SALUD UNA CRÓNICA DE SU FUNDACIÓN* 39 (2003).

30. 1917 Constitution of Mexico, Art. 123 (Mex.), available at <http://www.latinamericanstudies.org/mexico/1917-Constitution.htm>.

31. Fernández Editores, *Creación del IMSS: Historia* (Mar. 27, 2013), http://www.tareasya.com.mx/index.php?option=com_content&view=article&id=3625:Creaci.

32. *Id.*

large portion of the urban population was self-employed or poor. These segments could not receive the benefits of the nascent social security.

In order to meet the basic health needs of the uninsured population, in October of 1943, the Ministry of Public Health and Assistance (Secretaría de Salubridad y Asistencia) was created through the unification of the Department of Public Health and the Ministry of Public Assistance.³³ This new institution would be in charge of providing basic health care services to the poor and public health services to all the Mexican population. Salvador Novo, a well-known writer and journalist who had a daily column in one of the most popular newspapers of the time, remarked the following: “The merging of the Department of Public Health and the Ministry of Public Assistance is a reasonable measure [. . .] The government of the Revolution has finally understood that the support for the deprived should not be a nice gesture of the altruist but an obligation of the State.”³⁴

Important as they were, the efforts implemented in the first half of the 20th century by the Mexican government to improve access of the poor, non-salaried population to health care services remained within the realm of public assistance. The legal platform to transform health care into a social right would not be established until 40 years later.

Meanwhile, the benefits of social security were extended to civil servants in 1959 through the enactment of the Institute for Social Security for Civil Servants Law and the establishment of the Institute for Social Security and Services for Civil Servants (Instituto de Seguridad y Servicios Sociales para los Trabajadores del Estado or ISSSTE).³⁵ A similar institution for the armed forces was created in 1961, the Institute for Social Security for the Armed Forces (Instituto de Seguridad Social para las Fuerzas Armadas or ISSFAM).³⁶

In 1983, as part of a major reform of the Mexican health system, a new paragraph was added to Article 4 of the Mexican Constitution, establishing the right to the protection of health. This paragraph states the following:

Every person has the right to health protection. The law will define the ways and means for access to health services and will establish the concurrence of the Federation and the federated entities in matters of public health, in conformance to that which is specified by section XVI

33. Ley General de Salud, El Diario Oficial de la Federación [DO], 7 de febrero de 1984 (Mex.).

34. Salvador Novo quoted in SECRETARÍA DE SALUD, EL LOS SESENTA AÑOS DE LA SECRETARÍA DE SALUD UNA CRÓNICA DE SU FUNDACIÓN 56 (2003).

35. GUILLERMO FAJARDO-ORTIZ, Línea Del Tiempo, Atención a La Salud: 1902-2002, in GUILLERMO FAJARDO-ORTIZ ET AL., PERSPECTIVA HISTÓRICA DE ATENCIÓN A LA SALUD EN MÉXICO 1902-2002 141-42 (2002).

36. Id.

of Article 73 of this Constitution.³⁷

A year later, the first General Health Law (*Ley General de Salud*) was passed.³⁸ This law replaced an old-fashioned sanitary code and regulated the new right to the protection of health.

Most social critics praised the addition to Article 4 and the new law as milestones but there were also calls to caution regarding their immediate impact. Law texts made clear that constitutions like that of Mexico had three types of provisions: positive, which generate rights and obligations; organizational, which establish the arrangement of constitutional institutions; and programmatic, which establish action advices for constituted powers.³⁹ The right to the protection of health was a programmatic provision and, as such, only a guide for public action. The declaratory character of programmatic norms implies that they cannot be asserted in a trial, which means that the recipients of the new social right could not force the State to comply with what was established in such a norm.

This did not discourage those involved in the effort to reform the Mexican health system. Francisco Ruiz-Massieu, lawyer and senior official of the Ministry of Health, quoting Burdeau, stated the following in an article published in 1983, a few months after the incorporation of the right to the protection of health into the Mexican Constitution: “Those working with legal norms know that the law is more than an instrument of coercion [. . .] it is a representation of the future, a creator of the social future, because it is the motor of political dynamics.”⁴⁰

In closing that particular article, Ruiz-Massieu made a call to accelerate change in the Mexican society in order to democratize it, creating, among other things, the conditions for the effective exercise of social rights. Those conditions were reached until the year 2000, when Vicente Fox was elected President of Mexico. His term marked the end of a seventy year-old authoritarian regime headed by the Institutional Revolutionary Party (PRI).

37. Constitución Política de los Estados Unidos Mexicanos [C.P], as amended en 2009, *Diario Oficial de la Federación* [DO], 5 de Febrero de 2013 (Mex.).

38. *Ley General de Salud*, *El Diario Oficial de la Federación* [DO], 7 de febrero de 1984 (Mex.).

39. PAOLO BISCARETTI DI RUFFIA, *INTRODUCCION AL DERECHO CONSTITUCIONAL COMPARADO: LAW FORMAS DE ESTADO Y LAS FORMAS DE GOBIERNO, LAS CONSTITUCIONES MODERNAS* 321-22 (Fondo de Cultura Economica, Fondo de Cultura Economica 1975).

40. Jose Francisco Ruiz-Massieu, *El Contenido Programático de la Constitución y el Nuevo Derecho a La Protección de la Salud*, 25 *SALUD PUBLICA MEX.* 353, 353 (1983).

IV. THE EXERCISE OF THE RIGHT TO HEALTH CARE AND THE ACHIEVEMENT OF UNIVERSAL COVERAGE IN MEXICO

The shift in power that took place in December of 2000 showed that Mexico had made considerable progress in the exercise of civil and political rights. The next great challenge was to ameliorate inequalities by assuring the universal exercise of social rights, including the right to health care. As mentioned above, the Mexican Constitution had formally recognized this right, but in actual practice not everyone had been equally able to exercise it. Half of the population, by virtue of its occupational status, enjoyed the protection of social insurance. The other half, represented by the non-salaried population (self-employed, informal population, unemployed and those out of the labor market), still received health benefits on a public assistance basis. As Lynn Hunt has written, “human rights are still easier to endorse than to enforce.”⁴¹

In 2001, the new administration announced the implementation of a major reform of the national health system. The principle guiding this reform was the idea that health care is not a commodity or a privilege, but a right; its guiding concept, not surprisingly, was the “democratization of health,” which involves the expansion of democracy to the realm of social rights.⁴²

According to Brachet-Márquez, the transformation of health care into a real social right requires, above everything, the definition of the health benefits that all citizens, regardless of their labor or socioeconomic status, should receive and can legally demand.⁴³ It also implies the definition of the mechanisms through which the costs of these benefits will be distributed among the population in order to guarantee its financial viability.⁴⁴ In Mexico, the definition for the uninsured was lacking as to the explicit entitlements that ensued from the legal recognition of the right to health care. Additionally, there was a lack of financial and organization vehicles to translate those entitlements into sustainable and effective health services for all.

The new public emphasis on health care as a social right and the concept of “democratization of health care” created the ethical foundation for a set of reforms to the General Health Law whose main purpose was the creation

41. LYNN HUNT, *INVENTING HUMAN RIGHTS A HISTORY* 208 (2007).

42. See generally SECRETARÍA DE SALUD, *PROGRAMA NACIONAL DE SALUD 2001-2006* (2001).

43. VIVIANE BRACHET-MÁRQUEZ, *CIUDADANÍA PARA LA SALUD: UNA PROPUESTA*, EN *REFLEXIONES EN SALUD* 43-7 (Misael Uribe Esquivel y Malaquías Lopez Cervantes eds. 2002).

44. *Id.*

of the SSPH and its operative branch, Seguro Popular.⁴⁵ These reforms were approved in 2003 and the new system started its implementation in January of 2004.⁴⁶

Seguro Popular offered financial protection in health to all the Mexican citizens who had been excluded from the benefits of social insurance. They were affiliated over a period of eight years.⁴⁷ The new scheme is being financed with federal resources, along with state allocations and a small family contribution that depends on the level of income and is waived for those in the lowest income deciles.⁴⁸

One of the most interesting aspects of the new financial formula is that its point of departure was the definition and cost of the specific entitlements that would give operational meaning to the right to health care enshrined in the Mexican Constitution. Thus, the law now stipulates a budgetary obligation for the federal and state governments in order to meet the expected demand from each individual that enrolls in Seguro Popular. The net result is that funding for health increased over a full percentage point of the gross domestic product between 2000 and 2010.⁴⁹

The guaranteed entitlements comprise two sets of interventions: first, a package of over 280 essential preventive and curative services that cover over ninety-five percent of the causes of demand in ambulatory units and general hospitals of the state health services, and a package of over sixty high-cost interventions for conditions with potentially catastrophic consequences for families, including HIV/AIDS, critical neonatal conditions, cancer in children, and cervical and breast cancer, among others.⁵⁰

The new General Health Law states that the Seguro Popular affiliates will have access to all health interventions included in both packages and to the respective drugs.⁵¹ In fact, at the moment of affiliation, all families receive a Charter of Rights and Duties that explicitly lists the health

45. FRENK JULIO ET AL., COMPREHENSIVE REFORM TO IMPROVE HEALTH SYSTEM PERFORMANCE IN MEXICO 1524 (Ministry of Health of Mexico, Vol. 368 2006).

46. *Id.*

47. *Id.*

48. *Id.* at 1529.

49. WORLD HEALTH ORGANIZATION, HEALTH EXPENDITURE SERIES: MEXICO – NATIONAL EXPENDITURE ON HEALTH 1, I (2013), available at http://apps.who.int/nha/database/StandardReport.aspx?ID=REP_WEB_MINI_TEMPLATE_WEB_VERSION&COUNTRYKEY=84027 (last visited Feb. 4, 2013).

50. See generally COMISIÓN NACIONAL DE PROTECCIÓN SOCIAL EN SALUD, CATÁLOGO UNIVERSAL DE SERVICIOS DE SALUD, available at http://www.seguropopular.salud.gob.mx/index.php?option=com_content&view=article&id=340&Itemid=389 (last visited Feb. 4, 2013).

51. Julio Frenk et al., The Democratization of Health in Mexico: Financial Innovations for Universal Coverage, *BULL. WHO* 542, 543 (2009).

interventions to which they are legally entitled.⁵² The law also stipulates that the package must be progressively expanded and updated annually on the basis of changes in the epidemiological profile, technological developments, and the availability of resources, which means that benefit coverage expands over time not only as new technologies and money become available, but also as new diseases and risk factors are identified.⁵³ The covered services are analyzed and chosen on the basis of evidence and preferences derived from cost-effectiveness analyses and ethical deliberations on social acceptability criteria.⁵⁴

Affiliation with Seguro Popular reached 52.6 million in April of 2012. If we add to this figure the number of Mexicans covered by social security institutions (59.2 million in 2011) and those covered exclusively by private insurance (1.8 million), we can reasonably state that Mexico is on the verge of reaching UHC and moving towards the universal and effective exercise of the right to health.⁵⁵

IV. CONCLUSION

It took a century to reach UHC in Mexico. In the 1920s, immediately after the Mexican revolution ended, several attempts to establish a social security system were discussed in Congress, but it was not until 1943 that a proposal was approved and an institute for social security, providing services for the workers of the formal private sector of the economy, was created. Many believed that eventually everybody in Mexico would be part of the salaried population and would receive the benefits of social security. However, this scenario was never reached: a large proportion of the population remained self-employed or joined the informal sector of the economy. Policy-makers were forced to look for alternatives to guarantee access to comprehensive health services to the non-salaried and poor population. All these efforts were developed within the framework of public assistance.

The 2003 reforms to the General Health Law, which created the SSPH and its operative branch, Seguro Popular, created the conditions to guarantee the protection of health as a right. This system is providing comprehensive health services with financial protection to the non-salaried population. The affiliation to this public insurance scheme reached 52 million in 2012. This means that Mexico has achieved near-universal

52. *Id.*

53. *Id.*

54. *Id.*

55. Felicia Marie Knaul et al., *The Quest for Universal Health Coverage: Achieving Social Protection for All in Mexico*, 380 *THE LANCET* 1259, 1259-79 (2012).

financial protection while continuing to strive for quality improvements that will make effective universal coverage a reality.

There are three basic lessons of the evolution of the framework that gave legal support to the expansion of health coverage in Mexico. First, the introduction of the right to the protection of health into the Mexican Constitution in 1983 identified UHC as an achievable vision. As a programmatic provision, this right was only a guide for action, but it gave policy-makers a solid legal platform to pursue this goal once the political and financial conditions to make it a reality were reached at the turn of this century.

Second, the establishment of the SSPH created the regulatory and financial conditions for the effective and universal exercise of the right to the protection of health. It placed access to comprehensive health care outside of the public assistance realm, guaranteeing its justiciability and establishing the rules to assure its financial sustainability.

Finally, the recent Mexican reform illustrates the potential to expand coverage with financial protection to reach the poor and non-salaried workers by decoupling access to social protection in health from salaried employment and transforming it into a right of citizenship.⁵⁶

56. Julio Frenk, *La Salud Como Derecho Ciudadano*, NEXOS EN LINEA (Mar. 27, 2013), <http://www.nexos.com.mx/?P=leerarticulo&Article=2102556>.