
STRATEGY ON HEALTH-RELATED LAW: PROGRESS REPORT

Background

1. This report summarizes the progress made in the implementation of the Strategy on Health-Related Law (Document CD54/14, Rev.1 and Resolution CD54.R9) (1, 2), adopted by the 54th Directing Council of the Pan American Health Organization (PAHO) in 2015. This is the first report on the strategy, covering the period from October 2015 to November 2023.
2. The Region of the Americas is the first region of the World Health Organization (WHO) to adopt an explicit strategy based on the needs expressed by various Member States, which informed the Pan American Sanitary Bureau (PASB) of the considerable challenges they faced in creating, implementing, revising their legal and regulatory frameworks, and establishing closer coordination during this process between the health authorities, the legislative branch, and other government branches, as well as coordination with relevant stakeholders. It was also designed as a response to requests for support in disseminating public health standards and guidelines that health authorities could implement when creating such frameworks, and which legislative and judicial authorities could use. The vision behind the strategy was that Member States should have adequate and strengthened legal and regulatory frameworks to promote health, including from the perspective of the right to health where nationally recognized, promoting the right to the highest attainable standard of health. The strategy is also intended to strengthen legislative and regulatory measures to protect health and address social conditions and their determinants.

Analysis of Progress Achieved

3. Efforts were made to disseminate the strategy in order to foster internal interprogrammatic work coordinated with subregional programs and PAHO/WHO country offices. The purpose of these efforts was to ensure coherence between scientific and technical developments and their associated legal frameworks, in order to strengthen technical cooperation mechanisms. Outreach activities targeting Member States were also undertaken, such as holding discussion sessions with legal departments, offices of attorney generals, and the planning departments of ministries of health. Participants in these sessions analyzed the main challenges to public health and how legislation and regulations could be better used as key tools to promote public health, with PAHO technical cooperation.

4. Emphasis has been placed on the need for active communication between the technical and legal departments of the different Member States, and on the need for broad collaboration mechanisms in areas associated with health promotion and protection, the determinants of health and related legislation, and active parliamentary engagement, considering the One Health approach.

Strategic Line of Action 1: Actions for health determinants

5. Most PAHO interventions on legislation have yielded positive results and have enabled consensus on improved, more robust legal texts, many of which have been approved by legislatures and the competent national authorities. Moreover, laws and regulatory proposals to foster healthy environments have been reviewed in 16 countries of the Region. These laws and proposals include those promoting air and water quality to reduce the effects of climate change in coordination with other sectors, as well as those promoting social protection programs and intersectoral work in the context of the One Health initiative, which involves a comprehensive and holistic approach to problems addressed in disperse legislation.

6. The suicide prevention and mental health laws promulgated by Guyana in 2023, which incorporate the determinants of health perspective, are an example of such legal texts. Model legislation has been created to promote mental health in Central America, with the participation of the Central American Parliament, the Executive Secretariat of the Council of Central American Ministers of Health, and the Dominican Republic. Moreover, proposals for stronger legislation to promote road safety have been formulated in seven countries.

7. The platform for essential public health functions, created for Member States, is an efficient tool to promote the formulation, review, and strengthening of legal and regulatory frameworks. While virtually all of the essential functions have an impact on these frameworks, the most important is function number four, regarding the design and implementation of health policies and the promotion of legislation that protects the health of the population. Measurement of the PAHO indicators for the strength of legal frameworks for universal health is based on this same premise and on indicators related to current regulations. In addition, a tool is being consolidated to support stronger comprehensive laws and regulations.

8. To consolidate this path, PASB is implementing a project to map high-impact regional legislation in 33 Member States aimed at strengthening the legal framework for universal vaccination. This project is tracking at least 40 legal categories associated with national legislative and regulatory frameworks related to vaccination in its various normative dimensions. The purpose is to create a toolbox that will promote comprehensive legal strengthening to guarantee protection for universal vaccination programs, which are one of the most important public goods for health. This is intended to ensure the effectiveness of these programs at the personal, community, national, and international levels. The most relevant judicial decisions on this topic in countries of the Region are also being analyzed, in order to study the arguments of legal claims and protections as a source of legal and regulatory inspiration, but from a practical standpoint. The recommendations of international human rights bodies are also being collated. This project will culminate in the development of a manual for best practices and model legislation.

Strategic Line of Action 2: Actions for the promotion, dissemination, and exchange of strategic information on health-related law

9. Many of the issues that PASB addresses involve regulatory or legislative innovation, which requires extensive legal research in the Region and in other parts of the world, as well as capacity-building in a variety of legal and cutting-edge disciplines, such as digital health legislation and the use of artificial intelligence for health.

10. To promote the regulatory modernization of its Member States, PAHO made recommendations for practically all countries in the Region and some territories to strengthen the regulatory component of risk factors for noncommunicable diseases, which are one of the leading causes of death and disability in the Region. The REGULA initiative proposed a conceptual model for national health authorities to design regulatory measures. Skills development has been promoted among parliamentary advisers and the legal advisory staff at ministries of health, as well as judicial training, with a view to harmonizing overall attitudes to public health law. Likewise, support has been provided to the process of legal and regulatory capacity-building to promote legal preparation for digital transformation in health. This preparation requires designing legal scenarios and tools to support the review and strengthening of Member States' legal frameworks based on strategic documents, such as the Eight Guiding Principles of Digital Transformation of the Health Sector (3) and the Roadmap for the Digital Transformation of the Health Sector in the Region of the Americas (4), and the Health Information Systems environment.¹ To this end, a tool was designed to measure the level of maturity of Member States' legal frameworks that facilitate this digital transformation. The tool also includes the use of artificial intelligence and is being consolidated so that it can be disseminated and applied openly in countries that require it.

11. Applied legal research has also been promoted as an adjunct to academic training, since the legal doctrine on the right to health is still incipient in most countries of the Region. There is only one global collaborating center in this area; namely, the O'Neill Institute for National and Global Health Law, at Georgetown University in the United States, which has been coordinating an active work plan with PAHO and WHO since 2016. Moreover, a number of entities—such as the Health Observatory of the University of Buenos Aires Law School and the Law School of the Torcuato di Tella University (Argentina), the postgraduate unit of the University of Havana Law School (Cuba), and the Law School of Externado University (Colombia)—have expressed interest in becoming collaborating centers and are supporting various PAHO health legislation projects. There is also a new venture with the Oswaldo Cruz Foundation (Fiocruz) that will consolidate technical cooperation regarding the right to health.

12. A relational database of health legislation in the Region is under construction on the digital platform of the Latin American and Caribbean Center on Health Sciences Information (BIREME).² There are two repositories that are already available for public consultation: one on risk factors for noncommunicable diseases, and the other on migration and health. In addition, five other thematic regional repositories are being built and will be available in the first half of 2024, regarding legislation on the following topics: *a*) alcohol, *b*) road safety, *c*) vaccines, *d*) and municipal and local competencies in urban health.

¹ See: <https://www3.paho.org/ish/index.php/en/>.

² Available in Spanish at: <https://sites.bvsalud.org/legislacion/>.

13. To foster the exchange of legal information and formal forums for dialogue on health law, the Caribbean Public Health Law Forum was created. The first of its kind, it was launched jointly by PAHO and strategic allies in the English-speaking Caribbean.³ The Forum has been operating permanently since 2021, and participants include the Caribbean Community (CARICOM), the Caribbean Court of Justice, the Caribbean Public Health Agency (CARPHA), the University of the West Indies, and the Healthy Caribbean Coalition, which is a non-State actor in official relations with PAHO. The Forum's plenary includes lawyers from the offices of attorney generals, who provide legal services in most Caribbean countries, as well as public health experts, professors, students, and academics. The participation of the latter aims to promote the development of legal capacities for health analysis in future generations.

Strategic Line of Action 3: Actions for universal access to health and universal health coverage

14. PASB has responded to a wide range of requests for technical cooperation as part of the implementation of the Strategy on Health-Related Law, in line with the Strategy for Universal Access to Health and Universal Health Coverage (Document CD53/5, Rev. 2 and Resolution CD53.R14), which the 53rd Directing Council of PAHO adopted in 2014 (5, 6). Some examples are described below.

15. The new National Integrated Health System Act of El Salvador (7) has become a new-generation law in Central America, promoting intersectoral integration in a segmented system, and aligning functions and strengthening legal aspects of the Ministry of Health's management and governance authority. The same momentum has been observed in Honduras: since 2015, several in-depth legislative reforms have been carried out to strengthen the health system, and these reforms have culminated in new laws and legislative projects that have been discussed in the National Congress at different times and are now in the process of comprehensive consolidation.

16. Among other important exercises, comprehensive mapping of legislation has been carried out in Belize, Guyana, and Paraguay to determine where improvement is possible. Specific efforts have also been made to harmonize some legal bodies in Trinidad and Tobago with the Convention on the Rights of Persons with Disabilities. Support has been provided for the drafting of new constitutions in Chile and Cuba, and for foundational reforms of the health systems in Chile and Colombia, which at various times have been the subject of parliamentary debate.

Strategic Line of Action 4: Actions to strengthen the coordination between the health authority and the legislative branch and other sectors

17. One of the most important advances promoted by the Strategy on Health-Related Law involves active and systematic efforts with the legislative branches of Member States. For example, since 2015 PASB has met annually with all the Health Commissions of the Parliaments of the Americas.⁴ At these meetings, participants discuss the most important public health challenges, and parliamentarians from the Region exchange experiences. In addition, the best international recommendations are systematically presented to parliamentarians by experts, national governments, and the technical areas of PASB and other stakeholders.

³ See: <https://www.paho.org/en/caribbean-public-health-law-forum>.

⁴ Available in Spanish at: <https://www.paho.org/es/parlamentos-amicas>.

18. There are subregional parliaments in the Region, constituted as autonomous international organizations, which function alongside the subregional integration bodies. PAHO has promoted the formalization of collaboration agreements with them to foster the implementation of the Strategy on Health-Related Law, especially with the aim of designing subregional tools for the harmonization of legislation in different areas of influence. For example, agreements have been concluded with the Central American Parliament, the Andean Parliament (8), and the Parliament of the Southern Common Market (PARLASUR) (9), which have remained in force and have had intense annual work agendas. There is also a collaboration agreement with the Latin American and Caribbean Parliament (PARLATINO), with which technical working sessions have been held on various topics. An example is the PASB participation in technical debate on the Model Sexual and Reproductive Health Act (10). PASB has proposed a number of initiatives to these subregional parliaments aimed at harmonizing and strengthening the legislation of Member States. In Central America, resolutions have been adopted for stronger laws on air quality, mental health (11), migrant health, and alcohol, and actions are also being taken in the area of organ donations and transplants. In the Andean Zone, a regulatory framework on health was launched, and another on immunizations. In the PARLASUR region, a framework was designed for immunization and road safety, and a resolution is under consideration for a model law on front-of-pack nutrition warning labels.

19. In 2019, PAHO launched the Parliamentary Network for Road Safety of the Americas, which is the regional version of the global network that the Parliament of the United Kingdom created under the auspices of WHO.⁵ PAHO serves as the technical secretariat of the network, and has promoted the membership of legislators from at least 14 countries and the exchange of experiences among them, through at least one session every year, to strengthen legislation in this area (12).

20. Cooperation with the judiciary has also been promoted to foster better coordination and understanding of the legal challenges of public health, given that the courts ultimately decide on the cases brought by users of health services. This collaboration includes the Caribbean Court of Justice, which has conducted several simulation exercises (moot courts) in which issues related to health legislation have been studied (13). Two regional meetings have been organized, one in Washington, D.C., in 2018 and another in Asunción, Paraguay, in 2019 (14), during which different constitutional courts, along with PASB, discussed the scope of the right to health and some general concerns in this regard. These meetings also served to promote closer communication between judges and ministries of health.

Action Needed to Improve the Situation

21. The COVID-19 pandemic highlighted the importance of the rights-based approach, and the most effective way to incorporate it in everyday life: through its explicit recognition in laws and regulatory frameworks. Such laws and frameworks ensure the construction of this duty, furthering the essential roles and responsibilities of modern States in the area of citizens' rights. Health legislation can be a fundamental tool to foster change, because it institutionalizes decisions and governs the exercise of authority. Moreover, this legislation makes it possible to compel transparency in the adoption of resolutions and citizen participation, and also promotes changes of habits and preferences in favor of healthy choices, which are at the center of primary health care, as expressed in the Declaration of Alma-Ata.

⁵ See: <https://www.paho.org/en/road-safety-parliamentary-network-americas>.

22. Member States could improve the institutionalization of the progress made in the realization of the right to health, and in the robustness of their health systems, by adopting a holistic approach and promoting the improvement of their legal and regulatory frameworks. To this end, they should put people at the center of decision-making, focus on primary health care, ensure health promotion and risk containment, and address the determinants of health, especially social determinants. This is the path that comes closest to the vision of health as a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.

23. It has been observed that in the construction of most countries' legal frameworks, health care interventions have been privileged; however, it is also necessary to balance this with actions targeting the health of the community. This is an in-depth approach to public health, which tends towards more uniform regulatory models associated with the Health in All Policies concept. Respect for the rule of law is one of the fundamental principles of democracy, which underscores the great importance of health-related law in the field of health, the right to which is still under construction in many Member States. Legislation and regulatory frameworks also support almost all essential public health functions. To build a holistic legal architecture that fosters the achievement of the highest attainable standard of health, without discrimination, it is necessary to promote legal training and regional regulatory harmony, rather than a case-by-case approach, as well as a comprehensive vision of legislation, rather than segmentation. Health-related law should be considered a mechanism to consolidate the changes that are being steadily implemented in the Region.

Action by the Directing Council

24. The Directing Council is invited to take note of this report and provide any comments it deems pertinent.

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