



THE URGENCY OF ENSURING UNIVERSAL HEALTH CARE

**Leave
no one out**

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「LEAVE NO ONE OUT」

INTRODUCTION

Leave no one out

Leave no one out. This was the Government's objective when it approved Royal Decree-Law 7/2018, on universal access to the National Health System, which set out to put an end to more than six years of exclusion from health care.

Almost three months after its approval and more than one month after it was ratified by the Congress, **the RDL 7/2018 is still not being applied**. An even more alarming development is that the **ambiguous nature of some of its provisions is giving rise to the imposition of restrictive interpretations in some regions that threaten the objective of ensuring universality as a basic principle of the National Health System**. The result is that the urgent situation that led to the approval of the new law still exists, and there are people who still see their right to health under threat.

We at REDER welcomed the new RDL as a step in the right direction, but at the same time we also warned

of the **existence of major loopholes** in its provisions. The new law does not standardise the procedures or requirements for obtaining a health card; and does not guarantee healthcare for minors, pregnant women or other especially vulnerable collectives, or care in A&E. **Clarifying these and other aspects requires approval by the Executive of the Regulations that implement RDL 7/2018.**

Evidently then, the creation of a universal healthcare system as enacted by the Government is currently at a standstill. The current situation in the regions offers little in the way of progress with in comparison to the state of affairs before the RDL 7/2018 was approved. In fact, setbacks have been observed in some cases. This report sets out to shed some light on this highly problematic issue and to insist that Government take immediate measures to adopt Regulations that ensure healthcare for anyone living in Spain.

We should never forget that universal healthcare is not just a question of justice and human rights, but is also an essential element in making for an effective healthcare system. Healthcare that prioritises prevention by granting coverage to the entire population, without exclusions, is a more efficient and less expensive healthcare system, since it reduces the number of hospitalisations, minimises risks in public health, etc., thus strengthening the National Health System and benefiting society as a whole.

THE CONTINUING EXISTENCE OF INSUFFICIENT REGIONAL LEGISLATION

All Spanish autonomous communities currently have some type of mechanism to provide health coverage to undocumented migrants. Some of these measures, adopted to mitigate the situation created by the RDL 16/2012, were important nuclei of resistance to the injustice of healthcare exclusion and contributed towards preventing any greater suffering for thousands of people. However, these measures have considerable limits that stop them from guaranteeing full universal healthcare.

Firstly, they are measures adopted by each autonomous community without any coordination with the state and this has given rise to a **highly fragmented territorial situation**, with 17 regional healthcare systems that

recognise different degrees of coverage and have different acceptance requirements, some of which are very difficult to comply with. Secondly, the legal insecurity that was prevalent before the RDL 7/2018 continues to exist because of the enormous variety of mechanisms for recognising access to the public health system for undocumented migrants: ranging from regional legislation, such as in Catalonia or Valencia; to simple internal circulars transferred to health centres such as in Madrid; or even agreements between the Health Council and social organisations, such as in La Rioja.

An additional problem is the **uncertainty generated in some regions by the sentences issued from the**

Vague and insufficient regional regulation



Regional map
(updated October 2018)

1. Autonomous Communities with Instructions and Orders.
2. Autonomous Communities with laws suspended by the courts.
3. Autonomous Communities with legally binding rules.
4. Autonomous Communities with internal circulars.
5. Autonomous Communities with Special Program.
6. Autonomous Communities with agreement between government and NGO.
7. Autonomous Cities with no specific regulations.

Constitutional Court and several High Courts of Justice that annul these regulations. Finally, the measures **do not recognise equal rights between migrants and persons with Spanish citizenship**, but rather lead to a form of “charitable” access for those who cannot be regarded as insured or beneficiaries in accordance with the above laws.

All these circumstances lead to a situation of inequality in access to the right to health according to the autonomous community where a person resides. Likewise, as the organisations of REDER have documented, **most autonomous communities continue to commit major infringements of the right to health** that need to be addressed.



Navarre

Ernesto is 31 years of age, from Peru and lives in Navarre where he is on the electoral rolls. Due to a lipoma that had grown considerably he went to the doctor. There he was told that they could not refer him to a specialist because after the declaration that the Regional Law of Navarre guaranteeing universal healthcare was unconstitutional, they were awaiting instructions on how to apply the new RDL 7/2018.



THE BARRIER OF ELECTORAL REGISTRATION

Most regional legislation in force establish the precondition of registration on the electoral roll for a minimum of three months to enable access to standardised healthcare. This requirement does match the one provided for in the RDL 7/2018.

The act recognises the right to the protection of health and healthcare for **foreign persons who are not registered or authorised as residents in Spain under the same conditions as persons of Spanish nationality**. No mention is made of electoral registration as proof that the person effectively lives in Spanish territory. This is a vital issue since (as we at REDER have commented) electoral registration is used far too often as a insurmountable barrier made of paper that stops many people from enjoying the right acknowledged by law. Thus, the lack of a valid identity document, which is common amongst people involved in long migratory processes, the inability to provide a rent contract, the fact that some live in sub-standard housing or have no home at all, stop many from being able to register. **Such a situation is further aggravated in enclaves such as Melilla, where access to the registry depends on whether the person already has documents or not.**

There are alternative and effective methods for establishing if a person actually lives in Spain. Several autonomous communities such as Navarre and Valencia have for some time been accepting other types of proof of residence that include certificates demonstrating that a person's offspring receive schooling, or liable statements by neighbours, which have made a major contribution to reducing cases of exclusion.

As regards the obligatory three months, the only reference in the RDL 7/2018 to a minimum residence period in Spanish territory is for cases in which

foreign persons are in a situation of temporary residence in accordance with the provisions of Organic Law 4/2000. For example, it makes reference to persons that have a tourist or student's permit, in other words, **an authorised stay**, and therefore the 90 day requirement is not applicable to undocumented migrants, who by definition lack authorisation.

However, the lack of clarity in the new RDL, by grouping together undocumented migrants and short-term residents under the same article, can lead to restrictive interpretations in this regard, and this is already starting to happen in some autonomous communities¹.



Melilla

Fátima is a Moroccan woman of 35 years of age and has lived for over 10 years in Melilla. Her husband, who suffers from a severe mental illness, has documents but she does not, which means that she cannot register on the electoral registry and cannot therefore engage in the process of applying for a health card.

She recently gave birth via Caesarean section, and although she received care during labour, the fact that she does not have a health card meant that she was denied care when the time came to remove the stitches from the Caesarean section, and so she was forced to seek help from a member organisation of REDER to receive the appropriate treatment.

¹ In August 2018, the General Directorate of Insurance of the Regional Government of Madrid sent instructions to health centres indicating that undocumented persons that could benefit from the provisions of the RDL 7/2018 were those that had passed the requirement of 90 days residence in Spanish territory.

THE NEED FOR PROTECTION IN PARTICULARLY VULNERABLE CIRCUMSTANCES

The law of 2012 included the right to unconditional provision of healthcare in five cases: pregnant women, minors under 18, victims of human trafficking, applicants for asylum and emergency treatment up to hospital discharge. Even an act as retrograde as the 2012 law understood that the particular situation of such persons such as these required guarantees of healthcare paid by public funds.

The new RDL 7/2018, with its mission of universal care, recognises the right to protection of health of all undocumented or unauthorised migrants residing in Spain, without making distinctions for the above mentioned special situations. However, this broad-ranging recognition is dependent on complying with a set of requirements demonstrating that the person does not have any other type of health coverage. Regardless of the greater or lesser difficulty each person may have in providing proof of these requirements, **the fact that the law does not specify any guarantees that people in these five situations shall be attended by the public health system means that their special vulnerability is ignored and may give rise to regressions in the right to health.**

What is particularly alarming in this regard are the situations documented recently by our organisations in a number of autonomous communities about invoices issued to minors and pregnant women based on a restrictive interpretation of the new legislative framework.



Madrid

Verónica is a transsexual woman from

Cuba. She is 39 years of age and arrived in Spain two and a half months ago seeking international protection. She went to a Health Centre to continue with her hormonal treatment, which is a right recognised by the Gender Identity Act. However, although she had the certificate of application for asylum, she was refused access to the system because she was not registered in the electoral registry. The result is that she cannot receive treatment.



THE IMPORTANCE OF GREATER FLEXIBILITY IN ADMINISTRATIVE REQUIREMENTS

A law that aspires to ensuring universal access to health for everyone living in Spain should be flexible enough to prevent any difficulties in demonstrating compliance with a given administrative requirement from turning into an insurmountable obstacle. Thus, the specifications made via the regulatory development of the measures for certifying the aforementioned requirements should take into account the realities that many people have to face when trying to obtain certain documents.

This is particularly so in issues relating to the so called **"certificate of non-export of rights"** currently required in most autonomous communities with EU citizenship and most States with whom Spain has signed a bilateral agreement. At REDER we have given repeated warnings about how in some of these cases, the states in question do not issue the certificate via their consulates, obliging people to return to their country of origin, which is impossible given their undocumented status, which in fact deprives them of the opportunity to access standardised healthcare.



Galicia

Carolina is a 26 year old Venezuelan

woman. Although she is undocumented, for over a year she has been living in Galicia, where she is registered on the electoral roll.

One night, while having dinner, a fish bone got stuck in her throat, and as she could not remove it, she went to A&E at the local hospital. There she was told that because she had no documents she was not entitled to treatment and that if they did treat her, they would have to charge her 400 euros. They recommended that she should go to a private clinic where the treatment would be cheaper.

With no other option, and despite hardly having sufficient resources as she was unemployed, she went to a private clinic where she was charged 140 euros for treatment.



THE PERSISTING EXCLUSION OF THE ASCENDENTS OF REUNIFIED FAMILIES

One of the most glaring inequalities imposed by the RDL 16/2012 was the exclusion of parents arriving in Spain as a result of a process of family reunification. These people, of an advanced age and in a weak state of health, found that the act deprived them of the possibility of benefiting from their children's access to public healthcare, thereby obliging them to take private health insurance, which is hardly feasible for these people due to the negative responses of insurance companies or the excessive costs of insurance policies such as these for people with few resources. The refusal by the Spanish Social Security to issue health cards to these people has been the subject of a large number of legal proceedings that have decided in favour of those affected. All the same, the exclusion persists.

The text of the current RDL 7/2018 appears to shed no light on these situations, although it does recognise the right to the protection of health and healthcare for foreign persons who have established residence in Spanish territory, it makes the effective nature of said right conditional on the person not having **the obligation to prove obligatory certification of the healthcare provision by other means**. Once again the lack of firmness in the text when stating

the rights of these people opens the door to possibilities that they may continue to be deprived of healthcare that is essential to them.



Castilla - La Mancha

Alejandro is 84 years old and has heart problems, in fact he has to use a pacemaker. Originally from Venezuela, although with dual Italian nationality, he came to Spain 10 months ago to live with his daughter and grandchildren, who have Spanish nationality. He was unable to obtain the permit for family reunification since he was required to have medical insurance and his advanced age and state of health mean that no insurance company is willing to provide him with insurance. The Health Card Office informed him that his EU nationality meant that they could not process the health card. This means that appropriate monitoring of his illness is now impossible.





REDER urges the Government to approve without delay the Regulations that implement Royal Decree-Law 7/2018 and to clarify the loopholes to ensure full universal care

In view of the above, the **Government can no longer delay the adoption of the Regulations that harmonise the application of the RDL throughout the country, guaranteeing access to healthcare in equal conditions to all persons** regardless of which autonomous community they live in. **It is also essential for the Regulations to clarify the loopholes in the RDL**, in particular:

- ▶ **More flexible tests to show that the person actually lives in Spain, unlinking this from the electoral registry requirement** and accepting the validity of effective alternatives to this requirement, which is already being applied in other autonomous communities.
- ▶ **Accept without any prevarications the right of undocumented migrants to obtain the health card from the very moment they can certify that they live in Spain.**
- ▶ **Ensure the right to healthcare payable by public funds in all cases and with no conditions for pregnant women, minors, victims of trafficking and applicants for asylum, and for treatment in A&E up to the time of discharge.** Express mention should be made in this regard to these situations given their highly vulnerable nature.
- ▶ **Permit the replacement of the certificate of non-exportation of rights with a liable declaration that said export does not apply.**
- ▶ **Affirm the right to healthcare for ascendants arriving in Spain as a result of a family reunification process** under the same conditions of equality as persons of Spanish nationality.



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Figures of exclusion

4755 PEOPLE EXCLUDED FROM THE NATIONAL HEALTH SYSTEM SINCE 2014

194 PREGNANT WOMEN

322 MINORS

78 REFUSED HEALTH CARDS ELDERLY PEOPLE WITH THEIR PAPERS IN ORDER

45 ASYLUM SEEKERS



443 CASES OF ATTENTION BEING REFUSED OR IMPROPER BILLING BY THE EMERGENCY UNIT



68 CASES OF CANCER



92 CASES OF HYPERTENSION



45 CASES OF HIV



88 CASES OF CARDIOVASCULAR DISEASE



116 CASES OF DIABETES



68 CASES OF SERIOUS MENTAL HEALTH



REDER Red de Denuncia y Resistencia al RDL 16/2012

REDER is a network of collectives, movements, organisations and persons involved in the defence of universal access to health and denouncing any breaches of same. At present over 300 social and professional organisations form part of REDER, such as the Sociedad Española de Medicina de Familia y Comunitaria (semFYC), Médicos del Mundo, el Observatorio del Derecho Universal a la Salud de la Comunitat Valenciana (ODUSALUD), Andalucía Acoge, la Plataforma Salud Universal Aragón; la Plataforma per una Atenció Sanitària Universal a Catalunya (PASUCAT); la Rede Galega en Defensa do Dereito á Saúde; la Asociación de Usuarios de la Sanidad de la Región de Murcia; la Plataforma "Ciudadanía contra la exclusión sanitaria"; la Sociedad Española de Salud Pública y Administración Sanitaria (SESPAS), la Federación de Asociaciones en Defensa de la Sanidad Pública (FDASP), la Asociación de Refugiados e Inmigrantes de Perú (ARI-PERÚ) and the Red Transnacional de Mujeres (NetworkWoman). For more information, see: www.reder162012.org