Universal access to health care services
Are we any closer to our goal?

Karrisha Pillay

The South African Constitution guarantees to everyone the right of access to health care services. In realising this right, the State is up against the legacy of apartheid health policies. The Constitution does not guarantee the right to health, but the right of access to ‘health care services’. This term should be defined so as to address mental and physical health needs at primary, secondary and tertiary levels.

To fulfil its duty to progressively provide access to health care services, the State is required to take ‘reasonable legislative and other measures’. In the light of the Grootboom judgment, there are a number of important questions that can be asked to determine how reasonable State action or inaction is in realising this right. Valuable guidance can also be obtained from General Comment No. 14 adopted by the UN Committee on Economic, Social and Cultural Rights, which monitors State parties’ obligations under the International Covenant on Economic, Social and Cultural Rights.

Mixed success
Measuring the Department of Health’s policies and programmes against the criteria established in Grootboom (see box below), it becomes clear that it has had mixed success. Although the Department has adopted a White Paper on Health and has also prepared a National Health Bill and a Mental Health Care Bill, these Bills have not been enacted by Parliament despite long delays. It is imperative that this legislation is adopted because, given the fragmented history of health care in South Africa, framework legislation is essential to facilitate the realisation of this right within the context of a unified health system.

A second point of concern is whether health care services are affordable and of adequate quality for all. The Government has taken laudable steps to provide pregnant mothers as well as children under six with free health care services. In addition, it has embraced a primary health care approach, which has affordable and accessible health care services among its central tenets. However, the issue of affordability is intricately linked to the quality of health care services.

Whilst the overall approach to the delivery of health care services within the public sector certainly embraces the principle of affordability, the quality of these services is still highly inadequate. The Medical Schemes Act does, to some extent, aim to ensure the better management of resources in the private health care sector through its prohibition of criteria such as health status for acceptance onto medical schemes and for determining premiums. However, in spite of positive initiatives such as the Medical Schemes Act, the disparity in the quality of health care services between the public and private health care sectors is still stark.

A high priority should be the passing of legislation dealing with social health insurance that will require all formally employed people to be insured for the costs of treatment of themselves and their dependants in public hospitals.

It is also open to question whether the government’s health policy responds adequately those in...
desperate need or those who face a crisis situation. The White Paper on Health gives special attention to meeting the health needs of the poor, the ‘under-served’ (although it provides no guidance on exactly who constitutes the under-served), the aged, women and children. However, people living with HIV/AIDS are not expressly mentioned in this context.

Quality of health services
A key issue is the implementation of health policies and legislation, particularly in relation to the quality of health care services provided for the poor. Reports abound on the numerous challenges state hospitals face, many of which adversely impact on the quality of health care services. These include ageing hospital buildings, a shortage of medication and equipment, higher patient loads and inadequate care by health care staff. Recent reports on the brutal treatment of women undergoing abortions at a Mpumalanga hospital lend further support to the contention that quality health care services are lacking in the public health sector.

The underspending of the health budget is a matter of particular concern in the light of the fact that lack of affordability ranks high among the factors precluding access to health care services.

Key challenges
Despite the fact that the government has taken some important initiatives in the health sector, many South Africans still do not enjoy affordable and adequate access to health care facilities. The health sector therefore provides many challenges for government as well as civil society. Some of these urgent challenges are:

- Lobbying for the passage of the National Health Bill and the Mental Health Care Bill.
- Monitoring the implementation of legislation, policies and programmes, particularly the extent to which they ensure the availability, accessibility and affordability of quality health care services;
- Researching the precise nature of the barriers that impede access to health care services;
- Identifying especially vulnerable groups and tailoring policies to address their special health needs;
- Ensuring that health care services are both physically and economically accessible to the poor. This includes an assessment of whether appropriate human and financial resources have been allocated to different spheres of government to fulfil the tasks and functions allocated to them;
- Ascertaining the reasons for the consistent under-expenditure of the national health budget and ways to maximise the utilisation of existing resources.

The challenge posed by the transformation of a historically fragmented, discriminatory health system into a unified one that is responsive to the health needs of its people is indeed formidable. Although we have made some progress in this regard, equitable access to quality health care services is still far from a reality. It is accordingly critical that both the extent as well as the pace of progress be tracked so as to ensure that the goal of ‘Health for All’ becomes a reality.

Framework legislation is essential to facilitate the realisation of this right.

Access to anti-retroviral drugs post-Grootboom

Pierre de Vos

South Africa is facing a national health emergency. Between four and six million South Africans are presently living with HIV/AIDS and this number is still rising. From a medical perspective, any government response to this crisis should address ways in which HIV infections can be prevented, as well as ways in which people living with HIV/AIDS can be provided with access to appropriate treatment. There are several strategies that the government can and should employ to ensure that people living with HIV/AIDS have access to appropriate treatment. One particularly thorny, but potentially highly effective strategy, would involve the use of anti-retroviral drugs.

The context
In the light of the Grootboom decision, the government has a positive duty to take reasonable steps, within its available resources, to begin the process of progressively providing access to anti-retroviral drugs to those who need them. To evaluate whether the steps taken are reasonable, it is necessary to take into account the larger social and economic context. This larger context includes, firstly, the fact that the most marginalised and vulnerable sections of the community are most severely affected by the HIV/AIDS epidemic. Secondly, the fact that this crisis is such a catastrophe, means that what might have been considered to be reasonable in other circumstances would be deemed outright callous when dealing with HIV/AIDS.

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