

# Difficulty accessing health care services in Colombia

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**Abstract:** The difficulty accessing health care services in Colombia involves actors from two different worlds: The Health Care System (HCS) and the judicial branch. The variety of their interests, languages and conceptions gives rise to interesting and counterintuitive dynamics which increase the complexity of this problem. A deep understanding of these subtle interactions and their consequences, in terms of time, money and justice, should be the first step towards the design of effective solutions and successful policies.

## I. Introduction:

The Political Constitution of 1991 is a milestone in the history of Colombia. Among the legislative reforms to create an inclusive society, such as the proclamation of religious liberty, gender equality, protection of the ethnic minorities and the opening of new participatory mechanisms; certainly, the most impactful change was the acknowledgment of Colombia as a Social State under the rule of law. But, did we envision the implications of this statement in every area of society?

In this new conception, life becomes critical. It goes beyond the biological and organic perspective to include spiritual, psychological and moral aspects. Moreover, the conception of human dignity takes place in every discussion of rights. What does that mean? In legal terms, “every public official should act under the statement that *human rights form an indivisible and interdependent system*, thus, *any action on one of them has an effect over the rest of them*” (Defensoría del Pueblo [Ombudsman Office], 2013, p.21). Now, **rule on paper**, how would that be put into practice?

If the objectives were defined, the mechanisms to achieve them also had to be proclaimed. This is how the action of *tutela* was created, a mechanism for citizens to claim before a judge the immediate protection of their constitutional rights (Const., 1991, art.86). This new legal action didn't require formalisms, complicated procedures or even the claimant to appear before the judge. The hour had come, this would be the trigger for chaos.

Figure 1 shows the total number of tutelas per year that have been delivered to judges' chambers across the country (blue line) and the amount of health care tutelas during the same time frame (red line) (Defensoría del Pueblo [Ombudsman Office], 2017, p.80). The growing behavior speaks for itself.

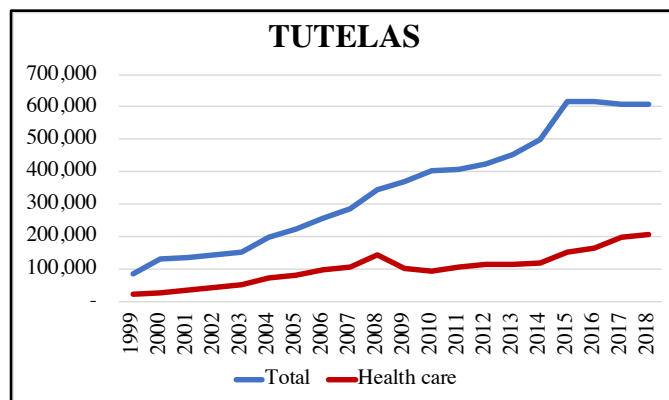


Figure 1. Comparison between total number of tutelas and health care tutelas from 1999 to 2018.

But, beyond these numbers, what are the reasons behind these health care claims? What does that tell about the performance of the Health care Colombian System? What are the consequences of this increasing number of health care tutelas? And what is behind the judge's role in dealing with the difficulty accessing health care services?

Moreover, considering that the human rights declared on the Constitution cover different areas of human life; from liberty to the right of property; from the freedom of speech to the right to life; from social welfare to access to health care, the government institutions in charge of guarantying each of those rights should differ. Now, is that the case of the Health Care System (HCS)?

This paper aims to discuss each of the questions proposed above from a systemic perspective, which was built upon the contributions of members belonging to 11 institutions which actions give rise to the problem in question. The adventure begins.

## **II. Evidences of the problem:**

According to the Ombudsman Office (Defensoría del pueblo, 2019), in 2018, 82.26% of the health care tutelas were requests to access a health care service which was delayed or denied; 17,16% of those claims corresponds to petitions *related* to health issues which were not, should not and could not be provided by medical centers (e.g. diapers, nutritional products and other goods or services), and finally, 0.58% of those tutelas referred to Social Determinants of Health; in other words, factors of the environment that the claimers considered as causes of their health problems (e.g. utilities, noise levels, among other things).

At this point, one might say that the Health Care System is not working as expected because its capacity is not enough to meet the demand. One might also question why do patients claim for non-health-related issues via tutela, and moreover, in case a judge grants their requests, who would finance those services. In order to solve these questions, a deeper understanding of the HCS performance is required. The analysis continues as follows.

## **III. How is the problem produced?**

### **1. The *time* factor:**

#### **Medical centers, the heart of the Health Care System.**

The IPS (which stands for *Instituciones Prestadoras de Servicios*) are institutions which provide health care services all across the country, according to the parameters and principles ordered by law (Ministry of Health, n.d.). In other words, the IPS include all the medical centers which daily welcome a wide variety of patients in order to solve their particular health needs.

But, what happens once the users enter the clinic? They remain in a first waiting zone until they can schedule an appointment. Some of them die or desert in the waiting process and others' requests are denied, making them to leave the system. Then, the remaining group of patients enters the second waiting zone, once their appointment has been scheduled, where they will wait until they get the service. It should be considered that both waiting zones refer to the state of a patient, meaning, they don't specifically describe a tangible place but a waiting status.

Now, some of the patients who have left the system because their requests were denied decide to claim before a judge – via tutela – and if the judge supports them, they will reenter the system with a pre-defined waiting time by law. In the tutela case, they will get the service in no more than 3 days; otherwise, there would be legal or economic consequences for the institution which denied it.

Now, how do patients leave the second waiting zone? In other words, by which means are they served? There are four main outflows or ways to access the service. First, the regular waiting line,

which serving order is determined according to the health professionals' criteria. The waiting time of this path depends mainly on two factors. The urgency of each patient's need (e.g. determined by triage and other methods) and the availability of the IPS's health care resources.

Moreover, there are three other paths which have a much lower waiting time. They will be denoted as shortcuts. These are the patients seen by doctors' favors (in Colombian culture, this phenomenon is known as "*palanca*"), those seen due to other shortcuts (for instance, the orders given by the Superintendence of Health) and the ones seen due to court orders via tutela. In fact, even if those paths have different waiting times, in general, the amount of time that a patient in regular order stays in the system will be much higher than if he had taken one of these three alternative ways. Why? Because the order given by a judge or a member from the Superintendence of Health includes a strict deadline, a couple of days.

Now, even though from the user's perspective those three shortcuts may be considered as a faster or more effective way to access the service, the fact that a doctor, in his office, during a specific period of time, cannot see more than one patient at a time, no matter who gave the order of attention, cannot be ignored. Therefore, if we look beyond the individual perspective and analyze the problem from a holistic point of view, we will find out that these four paths are not independent of each other. On the contrary, they all depend on – and consume from – the same "bag" of available medical resources.

Accordingly, the more patients that are seen through each of the four outflows, the greater the medical resources consumption will be. Consequently, as the utilization increases, the amount of available health care resources will shrink, until it is regenerated. Now, how does that affect the Health Care System performance and, moreover, those patients waiting for medical attention? In fact, as mentioned above, the waiting time of the three shortcuts won't change because it is determined by law, in the first two cases, or decided by a specific doctor. In other words, the order from a judge or other authorities (like the Superintendency of Health) include a specific deadline. So, if a doctor cannot see more than one person at a time, he has to postpone that patient who was in the regular line. In other words, if there are more patients seen by shortcuts, there are going to be less available health care resources and finally, the waiting time of the patients in regular order will be increased, leading to a balance cycle.

In conclusion, unless the capacity of the clinic increases (by hiring more doctors, building new medical facilities or working extra hours) the number of patients seen in a period of time will not be increased but shuffled. This is a matter of order and opportunity, no matter who does the decision come from. Hence, it all boils down to a simple question: who should I serve first?

## **2. The *money* factor:**

### **The cycle of the health care resources: From the clouds to the ocean**

However, not everything is a matter of time. The availability of health care resources greatly depends on the financial resources of the system. As discussed above, these funds are not limited. On the contrary, they come from a generation and distribution process which can be compared to the water cycle.

#### **2.1. First station: The clouds**

What are the clouds? A group of particles in the form of water droplets or ice crystals, which, if reach tens of micrometers, fall rapidly, colliding with one another to form rain (Baker, M., Peter T., 2008). In the health care context, each tiny drop represents the economic contribution of a citizen. Indeed, the contribution of each person is a much smaller amount compared to the average cost of his/her health care needs. These water drops are collected on monthly payments, and along with taxes, destined to fund the HCS.

## **2.2. Second station: The moor**

This beautiful ecosystem has a crucial role in the water cycle. Through the diverse foliage, the water that comes from the clouds is captured and then, accumulated in bodies of water. Analogically, the ADRES (which stands for *Administradora de los Recursos del SGSSS*) is the institution which collects and controls the money raised from citizens and the government (Art. 66 & 67, Law 1735, 2015).

## **2.3. Third station: The river**

The money collected in the moor is now delivered to the next actor in the chain. The EPS (which stands for *Entidades Promotoras de Salud*) are the institutions that are in charge of the management and assurance of the Mandatory Health Plan (MHP). Each EPS gets a sum of money which depends on the number of their affiliated users. Additionally, it receives another cash amount to cover those services which are not included in the MHP. This last type of income, which is known as “recobros”, is completed after a certain period of time if certain requirements have been fulfilled (e.g. the patient must have already received the service and the clinic should have been paid for it). In other words, the EPS are paid **after** the patient gets the service.

Unfortunately, all the water that comes from the clouds doesn't arrive to its destiny. On the contrary, there are some outflows that will reduce the starting amount. Corruption cases, the EPS' operating costs and the penalties imposed to the HCS by regulatory agencies, due to the *malfunctioning* of the system, are some of them.

## **2.4. Fourth station: The ocean**

Finally, after a long journey, the remaining money has arrived to the sea, the IPS (Instituciones Prestadoras de Salud) which include all the institutions which provide health care services. Each EPS hires a group of IPS according to their strategic plan and the services required by law. This body of water is what determines the availability of health care resources, the ultimate factor which defines the waiting time of the patients in regular line.

Now, how is the sea water evaporated? In other words, how is the money actually spent?

Looking back at the reasons behind tutelas, mentioned above, and based upon the arguments of the interviewees, patients' requests can be grouped into three different categories. 1. Urgent medical needs 2. Medical requests which are not urgent or may not be really required. 3. Requests which are not precisely medical services.

Now, the three kinds of needs, if allowed on first instance by the doctor or if denied and then mandated by the judge, consume resources from the same ocean, meaning, from the IPS. What happens next? If more requests are approved, especially those which are not necessary and non-health-related, the consumption of health care financial resources is going to be greater. As a consequence, the availability of medical resources in a period of time will decrease. Finally, the waiting time of those patients who were scheduled according to medical criterion (the urgency of their needs) will be longer. Then, what does that say about the actual performance of the HCS? **(Cycle B1)**

In a system with limited resources it is necessary to prioritize. A decision must be taken again, but, what should be the criteria? Should the Health care System pay for non-health-related or non-necessary requests?

## **3. The justice factor:**

### **Judges and health professionals: two different worlds**

As we mentioned above, when talking about tutelas, there are several actors involved. The patients who request a service, the IPS or EPS who denied or delayed it, the lawyer who advised or even

compiled the written claim and finally, the judge who will give the verdict. Even though each actor contributes in the process, the final decision will be only in the judge's hands. That's why the following story needs to be told.

Charles is an ethical, charismatic and trustworthy husband, father, citizen and judge. His kindness makes everyone smile. Every morning, when he gets to his chamber, his also kind secretary briefs him about the agenda of the day. A couple of audiences, a bunch of cases to study (crimes, claims, disputes, corruption cases and so on), and, of course, a pile of folders that require to be analyzed in 3 days, at most. Yes, some of them are health care tutelas which demand a quick but crucial answer. There is no choice. Tutelas first, the rest will have to wait.

Thereby, considering the number of accumulated folders on the judge's desk, and, of course, deducting the hours spent on audiences from the work shift, what happens? The more tutelas that need revision, the more time allotted to their analysis, and so, the less available time to work on the other cases. Final result? The famous – but undesirable – judicial congestion.

On the bright side, there has to be a quick solution to this problem. In fact, as Charles and his friends explained, many of the judges, due to the pressure and the bunch of coming deadlines, will increase the speed of the tutelas analysis, which will result in less tutelas that need revision and so on (**Cycle B2**), of course, until new ones come along.

This natural defense mechanism seems harmless. After all, the judges have had a long and rigorous academic and practical preparation to get to where they are. Their strong background in law should be enough to... hold on. Knowledge in law is definitely required to address every single case, but is that enough to decide upon a **health care** tutela? In other words, if a judge will analyze and decide over a health claim, shouldn't he need a medical perspective?

In fact, he does. So, what are the consequences of not having a medical background – and not counting on a health professional to carry out the analysis process either? Well, as the working speed increases, the degree of analysis will be less rigorous, which will finally result on more court decisions in favor of the patients. Why? First of all, the absence of medical knowledge leads to a climate of uncertainty. The backlog of pending cases and the upcoming deadline to decide over the tutela case add more pressure to the judge. On top of that, a natural – and completely understandable – fear of making a mistake and affecting somebody's health, along with the human dignity worldview instilled in the judge during his career, will drive him to protect the most vulnerable part, without repairing in the real urgency and appropriateness of the case.

Then, what is the result? More patients seen due to court orders leads to a higher consumption of medical resources, reducing the availability of health care resources and leading to a longer waiting time of those patients still “standing” in regular line, whose needs could be more critical than those of the patients who displaced them (reinforcing **Cycle B1**). However, this is not the end of the story. As more patients are seen due to court orders, people's perception of the effectiveness of this mechanism is reinforced. Then, in the medium term, the judicial shortcut becomes the main gate to enter the HCS (**Cycle R1**). Does this sound counterintuitive?

Finally, when analyzing the actual role of justice in health issues, many questions arise. Are we making the system more efficient or are we just changing the normal order of attention? What are the criteria behind the judge's choice? And... what should it be?

#### **IV. Conclusion**

This journey inside the health care and judicial systems in Colombia prompts a deep discussion about the actual decisions, priorities and rules that give rise to the difficulty accessing health care services in the country and, moreover, about the responsibility that every actor involved in the problem should assume.

In the first place, time is a crucial factor in the HCS. Even if at the end all patients are served, critical health needs require fast solutions; otherwise, it could be too late or undesirable effects could occur. This is a matter of order and opportunity. If somebody requests a service that doesn't need, that person is taking the opportunity from someone else. Someone who might need it, maybe to survive.

On the other hand, because resources are not unlimited, it is necessary to reflect on the current design of the HCS and the actual rules that guide the actions of the main government institutions in charge of assuring the human rights proclaimed in the Constitution. The budget assigned to each sector has to be carefully planned, but also the way it is spent has to be controlled. If in practice, the amount of money allocated to the HCS has to cover not only health needs but also health-related and social issues (which correspond to other human rights), either the budget has to be increased or there should be a system to effectively redirect those cases to the proper entities to whom they belong. If the current situation continues, the finances of the HCS will get worse and that will be continue to be reflected on the performance on the system and, furthermore, on the population's health.

In the third place, justice can become a double-edged sword. If the great gap between the judicial and health care systems is not closed, if their languages do not match, if members from both sides keep blaming each other and do not look at the problem from a collaborative and holistic perspective, the number of tutelas will keep increasing. It is necessary to bridge these two different worlds. In order to effectively decide upon a health care tutela, every judge requires the medical expertise. On the other hand, the health professionals need the legal knowledge to guide the patients who are having health-related or non-health issues. A currently inexistent cooperation bond should be created.

Finally, even though a deeper understanding of how a complex problem is produced is a crucial step, the engineering mission has not finished yet. The discussion presented in this paper aims to be a starting point to inspire further conversations on the topic and contribute to a participatory design process, in which every actor involved in the problem in question should be actively included. The following trigger questions could be useful to unleash a future ideation phase:

#### **V. How might we?**

How might we incentivize patients to request only the services they really need?

How might we reinforce the urgency order of attention in the medical centers?

How might we build a system in which the government institutions, who are in charge of granting the human rights declared in the Constitution, can effectively work together in order to solve the kind of needs they are responsible for?

How might we reduce the drain on the HCS resources in their course from the clouds to the sea?

How might we close the gap between the health care and judicial worlds?

How might we stimulate cooperation between judges and health professionals in order to enhance their guidance to the patients from their own roles?

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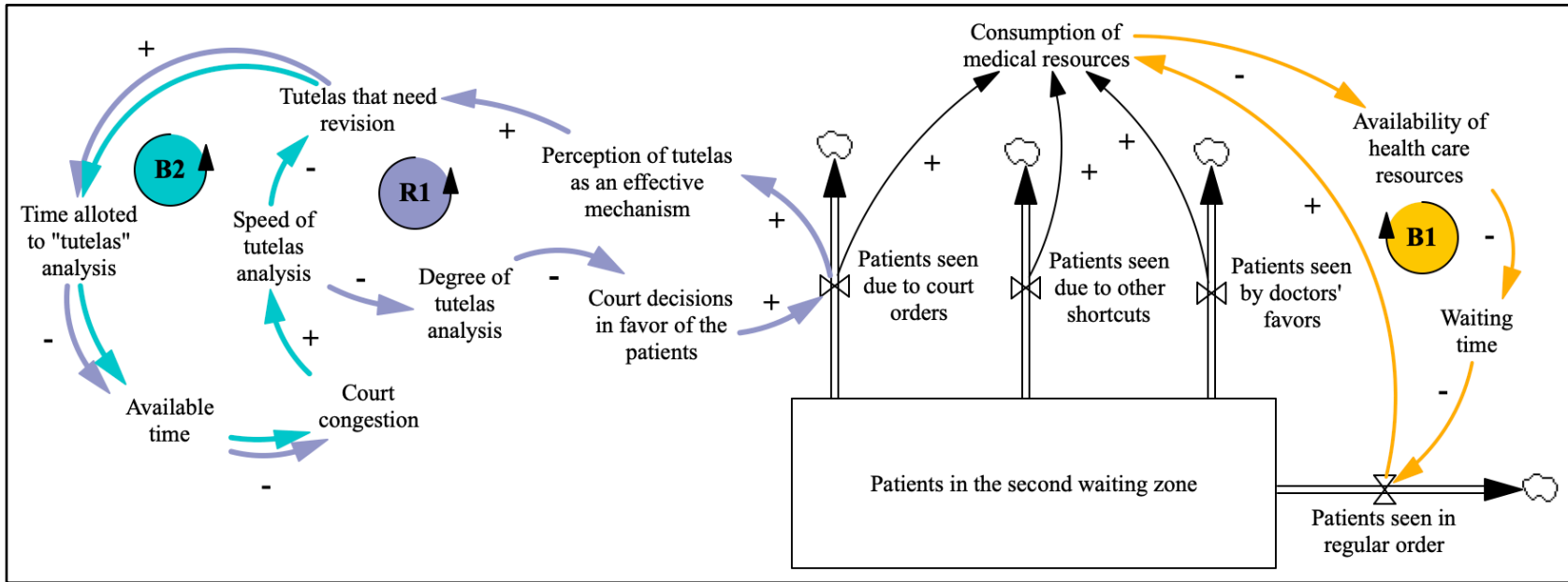


Figure 2. Representation of the main dynamics described, regarding difficulty accessing health care services in Colombia.

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