

Bolivia backtracks on malpractice law

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In the midst of a health-care reform, a malpractice law put forward by the government has triggered strikes from the medical community. Amy Booth reports from Cochabamba.

The Bolivian Government is repealing controversial proposed malpractice laws following a 47-day strike by medical workers. The legislation came amid broader health-care reforms ultimately aiming for universal access to health.

President Evo Morales announced on Jan 4 that he would request the repeal of article 205 of the new penal code. It would have entered into force mid-2019. Bolivia's National Medical Council signed an agreement with the government on Jan 8, ending the strike. Most doctors, alongside biochemists, nurses, and other health-care professionals, returned to work on Jan 9. Some remained on strike in support of broader demands for the repeal of the entire penal code.

“What we asked for has been accepted, with the help of the population and other sectors”, said Edgar Fernández, president of the Medical College of Cochabamba.

Hospitals were only treating emergencies during the strike, which had involved marches, roadblocks, hunger strikes, and other forms of protest since it started in November.

Under article 205, doctors found guilty of malpractice would have lost their licence, been made liable for compensation payments, and been imprisoned for up to 4 years in case of serious harm to the patient or 6 years in case of death of the patient. The penalties increased by a third if the defendant was found guilty of gross negligence. Doctors would have been exempt from prosecution if the harm to the patient was due to lack of resources or adverse reactions that were difficult or impossible to foresee.

Otmar Kloiber, secretary general of the World Medical Association, told *The Lancet* that having criminal sanctions for medical error is harmful because doctors become reluctant to treat high-risk cases. It also makes it difficult to learn from mistakes because medics do not want to admit their errors. In developing countries, punitive laws can also encourage doctors to emigrate in search of better working conditions, Kloiber said.

Carlos Bellott, a legislative development specialist in Bolivia, said he thought sensitive fields such as health care merited special legal treatment because errors could risk human lives. “I don't think [article 205] is particularly problematic”, Bellott said, noting that if medical professionals were tried under this law, they would be protected from disproportionate sentences by the principle of proportionality. He added that Bolivia is a signatory to most major human rights treaties, meaning that whatever penalties doctors faced, their human rights would be respected.

Fernández believes that doctors should be able to create an expert panel to judge instances of medical error, with only the most egregious cases going to trial. However, Bellott considers that this solution opens the door to medics protecting their own.

Doctors were also protesting the creation of a regulatory authority for health care, whose tasks were to include overseeing medical insurance and regulating prices in the private health-care sector

Ivan Ayaviri, head of communications at the Bolivian Department of Health, said that health-care costs can mean financial ruin for many poor Bolivians. “We need a new, unified health system”, he said. “Health has been run by elites and the middle classes.”

The changes come as Bolivia seeks to reform its health-care system to provide universal, free care. Bolivia is widely considered to be the poorest country in South America and many of the poor cannot afford treatment, even at public hospitals. Those with formal employment receive health insurance through their employers, but since most poor Bolivians work in the informal economy, many are uninsured.

The 2009 constitution states that health care will be made free and available under a unified system. The current system is fragmented, with health-care responsibilities devolved to different levels of local government, and will require investment and reform before the plan for universal, free health care can be carried out.

More generally, doctors are also demanding increased investment in health infrastructure, materials, and the hiring of more doctors, according to Fernández. The proportion of doctors per capita in Bolivia is already low, putting a strain on the system: Bolivia had 0.473 physicians per 1000 population in 2011 (the latest available figures), well below neighbouring countries such as Peru (1.116 in 2012), and Brazil (1.852 in 2013) according to WHO. At present, the government is in the process of building 49 new hospitals, Ayaviri said.

Since coming to power in 2006, Morales and his Movement towards Socialism (MAS) party has invested in several health and social policies, including benefits for pregnant women and school-age children. However, doctors and the state alike recognise that there is still a long road ahead for Bolivia's health system.