In Sweden, there has been during the latest decade a broad discussion about legal rights for the individual in the fields of social welfare, social insurances and health care. The concept of patient’s rights has been established. Patient’s rights are seen as individual rights with the aim to protect the individual sphere and individual liberty. The obligations of the government to safeguard the access to social goods (the social right to health care) have also been thoroughly discussed. According to the Swedish administrative legislation, the Swedish government has to ensure an equitable distribution of health care as well as other social goods, and a just participation of the individuals in these goods.

This article will deal with the right to health care in Sweden. Firstly, the legislative goal for the health care in Sweden will be discussed and, secondly, the right to treatment in the current Swedish legislation will be discussed. A Swedish Parliamentary Commission, the Priorities Commission, have delivered two reports on equitable distribution. Thirdly, the proposal of the Commission will be presented. The article will end with some conclusions.

1. Legislative Goals for Health Care in Sweden

In the Health and Medical Care Act Paragraph Two, the basic goal of the health and medical care is stated. The goal is ‘good health and care on the same conditions for the entire population’. Health and medical care include both the patient care carried out by the local government as well as other providers such as employer-provided health care, health care in the schools, and private health care.

This goal is an overall objective; it is not a requirement that must be fulfilled in every individual situation. It focuses instead on a desirable future state of affairs, not qualities or demands for the present. The actual obligations
of the local governments are determined in other sections (Paragraphs 3-21).

The discussion begins with the legislative goal of the health care system: good health for the entire population. The definition of the concept of 'health' is not self-evident and a universal definition of this term does not exist. The classic definition used by the World Health Organization is "health is a state of complete physical, psychological and social well-being and not merely lack of illness or weakness". The legislative preparatory work of the Health and Medical Care Act states that good health is one of the indicators of the conditions and the qualities under which people live (Prop. 1981/82:97, p. 113). Moreover, it is pointed out that qualities such as meaningful free time, absence of stress in the workplace and overall physical and psychological well-being ought to receive greater attention than they normally do.

According to the legislative preparatory work, health care can be an expression not only for the individual's state of living but also a concept which reflects the health situation of the whole population. The concept of health is relative and dependent on such factors as financial assets, the level and progress of science, environmental conditions, etc.

The second part of the objectives for the health care system expressed in the Health and Medical Care Act Paragraph Two is care on the same conditions for the entire population. This involves, according to the legislative preparatory work, the possibility for everyone — irrespective of where one lives in the country — of using the services offered by the health care system when needed and under the same conditions for all. The possibility of receiving care shall not be dependent on such circumstances as age, gender, ability to take initiative, education, financial means, nationality or cultural differences. The position of a patient on waiting-lists, if any, may not be influenced by such circumstances. Even for less acute or serious illness, the possibility of receiving treatment must be available within reasonable time. Society has an obligation, within the framework of available resources and scientific knowledge, to offer care for everyone in need of care. Therefore, according to the legislative preparatory work, it is very important that society takes care of especially exposed groups, such as the elderly and handicapped.

According to the general principle of equality, under which Swedish local governments operate, it is not permissible to give certain residents of the municipality (or groups of residents) special treatment without having an objective and legitimate reason for doing so. It may seem as if the principle of care on the same terms for everyone in the Health and Medical Care Act Paragraph Two is an expression of the principle of non-discrimination. This is true except for the fact that the regulation in the Health and Medical Care Act carries a wider purpose than the principle of equality. The Minister presenting the report stated: