



## LEGAL ALERT

2/2012

### Easier way to seek compensation from hospitals

The amended Act on patient's rights being in force from January 2012, imposes an obligation on hospitals to conclude insurance policies against so-called medical events, i.e. a diagnosis, treatment or application of medicine contrary to the current medical knowledge.

On 1 January 2012, under the Act of 28 April 2011 amending the Act on Patient's Rights and Patient's Rights Spokesman and the Act on Compulsory Insurance, Insurance Guarantee Fund and Polish Motor Insurers' Bureau, the regulations introducing the compulsory insurance of patients against medical events resulting from the hospital treatment, within the meaning of regulations concerning health care activity, came into force.

The essence of the new compensation proceedings is an establishment by the so-called **district committee adjudicating on medical events**, whether a medical malpractice occurred or not. If yes, the insurer of the hospital where the event has occurred, shall propose compensation or payment of damages to the injured party or its heirs.

The key issue which makes this legal construction complete, is the obligation of hospitals to conclude an insurance agreement covering damages resulting from mistakes made during treatment. It is one more compulsory insurance that hospitals are obliged to have.

Upon introduction of the amendment, there will be three types of insurance within the health protection:

1. a civil liability insurance for a doctor;
2. a civil liability insurance for a hospital;
3. a new insurance for a patient against medical events.

The civil liability insurance for a hospital (OC) is a property insurance, while the insurance against medical events is an insurance having

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features of a personal insurance. **As regards the new insurance, an individual fault is not predicated but the damages for which the institution is financially liable is determined.** The entity which runs a hospital is obliged to have two different compulsory insurances. It will be the patient who will decide on the manner of claiming damages.

The provisions binding since the beginning of 2012, introduced a number of solutions aiming at a significant simplification of the procedure of claiming damages by patients.

A person who considers itself as a party injured by health service will be entitled to submit its claims to the **district committee adjudicating on medical events**. The committees are to be composed of 16 members of medical and legal education and the adjudicating panel is to be composed of 4 members. The 4-person committee appointed at each Voivodship Office may consider requests of patients who have suffered injury **after 1 January 2012**. The committees do not adjudge damages but they ascertain whether a medical event has occurred or not.

**A medical event** is an infection of a patient with a biological pathogenic agent, bodily injury, disorder of health of a patient or his/her death resulting from a diagnosis, treatment (inclusive of an operations), application of medicine or medical device/ product which is inconsistent with current medical knowledge.

The hospital should be considered liable if a particular health impairment occurs as a result of decisions inconsistent with the current medical knowledge. It is of no importance, who is directly liable for the damage. The hospital will be responsible for the medical event, if the decision on wrong manner of treatment is undertaken by a doctor or any other entity acting within the institution. It is essential that the hospital is liable also **for abandonment of treatment**, if the medical treatment is necessary.

Claims may be submitted to the committee within 1 year from the date on which the entity (patient or his/her heirs) filing the request learned about the infection, bodily injury or disorder of health or when the patient died. However, the abovementioned time period cannot exceed 3 years from the date on which the medical event occurred.

The one-off amount of compensation may amount to:

- in case of infection, bodily injury or disorder of health of the patient – PLN 100,000,

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- in case of patient's death – PLN 300,000 with regard to one person.

A patient, despite the compensation for health impairment, may also apply for a pension. It may even amount to at most PLN 3,000 payable monthly.

#### Conclusions:

- in case of a health impairment resulting from negligence of a medical institution, the legislator provides a reduced time period for claiming damages (3 to 4 months);
- the only thing to be done is to submit a complaint to the **district committee adjudicating on medical events** and pay the fee in the amount of PLN 200;
- it is the committee and not the court who will decide on granting the compensation; the committee will not adjudicate on a fault of the employees of health service;
- if the committee ascertains that the compensation is undue or if the insurer grants a sum of money which is too low according to the interested party, a patient is entitled to not accept the decision and assert his/her rights at court .

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**If you wish to get more specific information about the abovementioned issues, please contact us.**

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