

FEDERAL LAW GAZETTE

FOR THE REPUBLIC OF AUSTRIA

Year 1999

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Part I

195. Agreement on Guaranteeing the Rights of Patients (Patients' Charter)
(NR: GP XX REV 1824 AB 1984 p. 174; AB 5985 p. 656.)

195.

The *Nationalrat* ("National Parliament") has decided:

Conclusion of the following Agreement is approved according to Art. 15a *B-VG* in accordance with the Constitution.

Agreement on Guaranteeing the Rights of Patients (Patients' Charter)

The *Bund* ("Federation"), represented by the *Bundesregierung* ("Federal Government"), and the *Land Kärnten* ("Province of Kärnten"), represented by the *Landeshauptmann* ("Head of the Provincial Government"), - known in the following as Parties to the Agreement - hereby agree to conclude the following Agreement in accordance with Art. 15a *B-VG*.

Aim and Definition

Article 1

(1) The Parties to the Agreement shall undertake, within the sphere of their responsibility for enacting and enforcing legislation, that the following patients' rights are guaranteed.

(2) Possessor of patient's rights in the sense of this Agreement shall be every person who makes use of services in the health service sector or needs said services on grounds of his or her state of health.

(3) Services in the health service sector shall be provided through members of the health professions working on a freelance basis and facilities whose functions shall be to maintain and protect health, to determine the state of health, to treat diseases, to perform operations, to provide assistance during childbirth and to nurse and care for the ill and the convalescent.

Section 1

Basics

Article 2

The personal rights of the patients shall enjoy special protection. Their human dignity shall be respected and safeguarded under all circumstances.

Article 3

Patients must not be discriminated against because of the suspicion or the existence of a disease.

Section 2

Right to Treatment and Nursing

Article 4

(1) The Parties to the Agreement shall undertake to guarantee the prompt provision of useful and appropriate services in the health service sector for all patients, regardless of age, sex, origin, wealth, religious confession, nature and cause of the disease, or similar.

(2) Through the applicable legislation under observance of the obligations of the Republic of Austria, it shall be possible that treatment of persons not possessing Austrian citizenship be provided only if the costs of

said treatment be carried by the patients or a third party; this shall not apply in the case of threatening danger to life, imminent childbirth or severe damage to health which requires immediate treatment.

Article 5

(1) The services in the health service sector (Art. 4 para. 1) shall be guaranteed through hospitals, out-patient facilities, services of extra-mural medical care including home-nursing, members of the medical professions working on a freelance basis and pharmacies. This shall also apply in particular for the care of persons with psychic disturbances.

(2) The services in the health service sector shall also be guaranteed in the areas of health promotion, preventive and industrial medicine, rehabilitation and the health care sector.

(3) Continuity in treatment and nursing shall be safeguarded through organizational measures.

Article 6

(1) The medically necessary emergency medical treatment, rescue and transport shall be guaranteed according to what is possible under the circumstances of the respective individual case.

(2) The necessary supply with drugs and medical products shall also be guaranteed.

Article 7

(1) Diagnosis, treatment and nursing shall be performed in accordance with the respective state-of-the-art and in accordance with recognized methods. Special attention shall also be paid to providing the best possible therapy against pain.

(2) If the purpose and range of services of a hospital are such that it cannot be guaranteed that a patient be cared for in accordance with the respective state of the medical art, it shall be guaranteed that the patient be transferred, with his or her consent, to a different, suitable hospital.

(3) Medical care in hospitals shall basically be provided at the medical specialist level.

Article 8

The Parties to the Agreement shall agree that the services in the health service sector shall be subjected to quality control and that state-of-the-art quality assurance measures shall be implemented.

Section 3

Right to Respect of Dignity and Integrity

Article 9

(1) The private sphere of the patients shall be safeguarded.

(2) During the admission or treatment of several patients in one room, appropriate structural or organizational measures shall be taken for ensuring that the intimate and private sphere is safeguarded.

(3) Especially when admitting long-term in-patients, measures shall be taken to guarantee the creation of familiar surroundings.

Article 10

The organizational, therapeutic and nursing routines in hospitals and health care institutions shall be adapted as far as possible to the generally accepted rhythm of life.

Article 11

The Parties to the Agreement shall undertake that clinical trials of drugs and medical products, or the use of new medical methods, shall not be permitted until after thorough ethical evaluation.

Article 12

The religious care of patients admitted shall be made possible at their wish.

Article 13

(1) The *Datenschutzgesetz* ("Data Protection Act") shall apply to health-related data and to other circumstances which can become known as a result of the provision of services within the health service sector and in respect of which patients have an interest in the maintenance of secrecy.

(2) Exceptions shall be permitted only in those cases specified in the *Datenschutzgesetz*.

(3) Rights to information and correction shall also be provided for data which is not processed with automatic support.

Article 14

(1) It shall be guaranteed that visits shall be possible in the context of in-patient care and that other contacts can be maintained. The wish of a patient not to be visited, or not to receive a specific visitor, shall also be respected.

(2) Means shall be provided whereby patients can nominate a confidant to be informed, especially in the case of a permanent degeneration in the patient's state of health, and with whom contact with the patients shall also be made possible in such cases outside the normal visiting times.

Article 15

(1) A dignified death shall be made possible in in-patient facilities. This shall include the obligation to provide the best possible therapy against pain.

(2) Confidants of the patients shall be given the opportunity to contact the dying. At the same time, persons shall be denied contact if the dying person so wishes.

Section 4

Right to Self-determination and Information

Article 16

(1) Patients shall have the right to be informed from the start about possible diagnoses and kinds of treatment, and about the risks and consequences of same. They shall have the right to be informed about their state of health and also about the cooperation required on their part during the therapy and about how to conduct their life in a way which supports the therapy.

(2) The way in which this information is provided shall be adapted to the personality and level of education of the patient and in accordance with the circumstances of the case.

(3) In the event a treatment is urgently necessary and the special circumstances of the individual case are such that comprehensive information would endanger the welfare of the patient, the scope of the information provided shall be oriented on the welfare of the patient.

(4) Patients shall have the right not to be informed; they must not be influenced towards exercising this right.

(5) Patients shall be informed from the start about the costs they can expect to incur.

Article 17

(1) Treatment of patients shall take place only with their consent.

(2) Treatment of patients without their consent shall be allowed only if the patient concerned is incapable of developing an informed opinion and postponement of the treatment would seriously endanger the life or health of the patient.

(3) For patients who are unable to accept the reasons or the importance of a treatment, or cannot decide to accept same, it shall be guaranteed that treatment shall only be carried out with the agreement of a representative appointed in accordance with the law and, if necessary, with the authorization of the court.

(4) Without agreement of the representative and, if necessary, the authorization of the court, treatment shall only be carried out on grounds of the risk associated with postponement if the time required for acquiring the agreement or authorization would mean danger to life or severe damage to health for the patient.

(5) Measures which involve a restriction of personal freedom or other interventions in the personal rights of the patient and which are undertaken without their valid agreement shall - insofar as the time required for acquiring the agreement or authorization would not mean danger to life or severe damage to health for the patient - be permissible only after appropriate engagement of the legal representative or, if necessary, of the court.

Article 18

Patients shall have the right to deliver a statement at the start, through which they express their wishes for the omission of a treatment or specific methods of treatment in the event they become incapable of acting, in order that these wishes shall be taken into account as far as possible when future medical decisions are taken.

Article 19

(1) Patients shall have the guaranteed right to inspect documents kept about them containing information on the diagnostic, therapeutic and nursing measures, including any supplementary material such as X-ray pictures.

(2) Limitations shall be permissible only to the extent that these are unavoidable for the welfare of the patient on grounds of special circumstances in the individual case. A representative of the patient shall also have the unrestricted right to inspect, insofar as the patient has not expressly excluded this.

Article 20

(1) Without his or her express agreement, no-one shall be included in clinical testing or used for purposes of research and training. It shall be possible to withdraw any such agreement at any time.

(2) The use of personal data for purposes of medical research shall require the express agreement of the persons affected. In such cases particular care shall be taken that the rights deriving from the basic right to data protection are safeguarded for those affected.

Section 5

Right to Documentation

Article 21

(1) The necessary documentation of the diagnostic, therapeutic and nursing measures shall be guaranteed. The process of informing the patients and their agreement to a treatment or refusal of a treatment shall also be documented.

(2) It shall be guaranteed that wishes expressed by patients are also recorded in the documentation.

(3) Wishes expressed in accordance with para. (2) can, in particular, be objections to the removal of organs in accordance with Section 62a *KAG* or wishes expressed in accordance with Article 18.

Article 22

Patients shall have the right to be provided on request with copies from the documentation in return for an appropriate fee to cover costs. The sense of Article 19 para. 2 shall apply.

Section 6

Special Rules for Children

Article 23

Information shall be provided to children in accordance with their respective stage of development.

Article 24

Treatment necessary on grounds of danger to life or the risk of severe damage to health shall be carried even against the express wish of the parent or legal guardian if postponement would be dangerous; otherwise the authorization of the court must be obtained.

Article 25

(1) Taking the respective circumstances into account, it shall be made possible for an under-age minor to be accompanied by a person to whom the child relates.

(2) In the case of admittance of under-age minors as in-patients, up to the tenth year of age, it shall be made possible for an accompanying person to be admitted as well if requested. Insofar as this is not possible for reasons of available accommodation, the person to whom the child relates shall be granted comprehensive visiting rights, which shall be restricted only on compelling medical or organizational grounds.

(3) Persons relating to a child shall, at their request, participate as far as possible in the care of the child.

Article 26

Facilities, departments and areas intended primarily for the treatment of minors shall be equipped appropriately to the age of such patients.

Article 27

(1) Insofar as organizationally possible, the admittance of minors as in-patients shall take place separately from that of adult patients.

(2) Members of the health professions who are responsible for the treatment and nursing of minors shall be trained such that they are able to cope with the age- and development-related needs of minors.

Article 28

Bodies responsible for hospitals shall take organizational measures to guarantee that children of school age can receive education in accordance with education legislation during longer stays in hospital as in-patients.

Section 7

Representation of Patients' Interests

Article 29

(1) Independent bodies shall be formed for representing the interests of patients and shall be provided with the necessary personnel and material requirements. The independent patient representative bodies shall not be subject to directives and shall have a duty to maintain secrecy. Their duties shall be dealing with complaints from patients and relatives, investigation of defects and shortcomings, and the conveying of information. Patient representative bodies shall be able to make recommendations.

(2) The independent patient representative bodies shall seek cooperation with patient self-help groups which are concerned with the interests of patients.

(3) Patients shall have the right to have their complaints investigated and their interests represented through the independent patient representative bodies. They shall be informed of the results of the investigation. Patients shall not incur any costs whatsoever as a result of invoking the patient representative bodies.

Article 30

(1) It shall be guaranteed that independent patient representative bodies are offered the opportunity to state their position before decisions on fundamental general issues with relevance for patients. This shall apply in particular before the erection of new in-patient and out-patient care facilities involving the expenditure of public funds, for the evaluation procedure associated with draft proposals for legislation and regulations, and for fundamental future planning.

(2) Parent organizations of patient self-help groups shall be given the opportunity to be heard in evaluation procedures associated with draft proposals for legislation and regulations with relevance for patients.

Article 31

(1) The Parties to the Agreement shall guarantee that information about performance in the health service sector shall be available to everyone.

(2) It shall be guaranteed that members of the health professions working on a freelance basis and bodies responsible for facilities in the health service sector provide objective information about their performance.

Section 8

Enforcement of Claims for Damages

Article 32

In connection with the liability for performances in the health service sector, deviations from the right to damages and from the general rules concerning burden of proof and warranty in the sense of the stipulations of the *ABGB* ("Civil Code") shall only be permissible in favour of the patients.

Article 33

Discussions over out-of-court settlements before medical arbitration bodies and similar institutions shall halt the progression of the limitation period until an appropriate time limit for submission of a claim has elapsed after a break-off of proceedings or after some other end to the arbitration proceedings in favour of the patient.

Section 9

Final Conditions

Article 34

Coming into Force

(1) This Agreement shall come into force on the first day of the next month after arrival at the *Bundesministerium für Arbeit, Gesundheit und Soziales* ("Federal Ministry of Labour, Health and Social Security") of statements from the Parties to the Agreement that the requirements for coming into force in accordance with the *Bundesverfassung* ("Federal Constitution") and the *Verfassung des Landes Kärnten* ("Constitution of the Province of Kärnten") are fulfilled.

(2) The *Bundesministerium für Arbeit, Gesundheit und Soziales* shall inform the Parties to the Agreement when the statements in accordance with para. (1) have arrived.

Article 35

Implementation

The Parties to the Agreement shall undertake to enact within their respective spheres of competence the legislation which is necessary for implementation of this Agreement.

Article 36

Amendment

Any amendment to this Agreement shall be made exclusively in writing with the agreement of the Parties to the Agreement.

Article 37

Deposition

This Agreement shall be drawn up as an original. The original shall be deposited at the *Bundesministerium für Arbeit, Gesundheit und Soziales*. Same shall send an authenticated copy of the Agreement to the *Land Kärnten*.

On behalf of the *Bund*:

Bundesministerium für Arbeit, Gesundheit und Soziales

Hostasch

On behalf of the *Land Kärnten*

Landeshauptmann of Kärnten

Haider

This Agreement shall come into force on 1 September 1999 in accordance with Section 34 para.1.

Klima