



Legislative complexity harms the efforts of the Czech Ministry of Health to ease nursing services provision

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The Ministry of Health tried to fill the legal vacuum relating to the price regulation of nursing care in residential social service facilities by including them under the "Reimbursement Decree". The Constitutional Court declared that this attempt was contrary to the law and constitutional order. The case illustrates the need for improved legislative processes.

Description

The key legislation regulating the price of health services in the public health insurance system in the Czech Republic is called the "Reimbursement Decree". This Decree is issued every year by the Ministry of Health (MZd/MoH, 2015). If the obligatory annual "price negotiations" (dohodovací řízení) between providers and payers are successful, the decree simply confirms the results of the negotiations. If the parties do not reach consensus or if the Ministry decides that the agreement is not in accordance with the law or the public interest, then the decree sets the value of "performance points" that measure the relative value of individual medical services, the total amount of reimbursement and regulatory limitations on output (for details see Act no. 48/1997 Coll., §17 (2) and (5)).

In its Decree no. 273/2015 Coll., setting up the reimbursement conditions for the year 2016, the Ministry for the first time included nursing services for clients of residential social service facilities. Until then, no specific regulation had been available to set the price for these services. This was a result of the previous strategy which used to rigorously divide health and social services, mainly in terms of funding. According to the Ministry, representatives of social service providers had repeatedly requested the inclusion of nursing services in the

decree. They had claimed it would substantially strengthen their negotiating position with the payers (health insurance companies), as well as reduce their uncertainty and transaction costs, mainly in situations when the provider and payer could not reach an agreement concerning the amount of reimbursement. In such case, there is, in practical terms, "a legal vacuum" and it is quite difficult to assess the result of possible lawsuits – the only way to overcome a lack of consensus. The Ministry accepted this argumentation, namely that the inclusion could prevent useless lawsuits (ÚS/CC 2016: 9).

However, two groups of Senators challenged the legality of this solution, bringing the case to the Constitutional Court. Their main argument was straightforward: The Ministry is entitled to regulate reimbursement only for "contractual providers" – who are allowed to take part in price negotiations. Residential social service providers are not "contractual providers" of specific health/nursing services – they do not take part in the price negotiation and their mandate to provide the services is not based on Act No. 372/2011 Coll. on health services. Therefore, the Ministry acted beyond its legal powers.

The Constitutional Court accepted this argument. It cancelled the relevant

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provision even though it declared that it understood the Ministry's reasons and found them reasonable. It suggested that the desired outcome should be achieved by a change in law.

Outlook & Commentary

The opposition and/or some healthcare providers in the Czech Republic are quite used to challenging the legality of the Ministry's reimbursement regulation via the Constitutional Court. There have been at least 10 attempts to cancel a decree or parts of a decree since 2005 (for details see ÚS/CC, 2013), with varying success. These cases show clearly that the legislation relating to the system of Czech public health insurance, and mainly its funding, is quite complex and does not provide a sufficient level of legal certainty to any of the actors involved. This is even more so in the area of long-term care, as it is a field where health and social services interface. Under these conditions even well-meant intentions can easily fail. It is not possible to claim that the major issue here is the lack of competence or

experience of public servants, although this may be partly the case. It is rather the legislative processes at the level of the Parliament that should be blamed in this case, as well as the sharp division between the agendas of the Ministry of Health and Ministry of Labour and Social Affairs, that still persists, despite many declaratory statements in official government strategies.

Having in mind primarily patients' and clients' needs, we believe that any proposal that can help the natural integration of social and health services for clients should be promoted. Residential social service facilities have been allowed to provide nursing and rehabilitation services (paid from public health insurance) since 2007. It took almost 9 years to fill the legal vacuum created by the legislation. Because of formal mistakes, this effort failed. This has not resulted in any dramatic change in the situation of residential social service facilities, as the payments for services provided in 2016 will still be made. But there remains a risk of highly unpredictable lawsuits in the case of disagreement over price negotiations.

Further reading

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MZd/MoH (Ministerstvo zdravotnictví/Ministry of Health) (2016). Rozhodnutí Ústavního soudu k úhradové vyhlášce nebude mít vliv na úhradu poskytnuté péče. Tisková zpráva [The Constitutional Court's decision will not have any impact on the reimbursement of provided care. Press release.] Available at: http://www.mzcr.cz/dokumenty/rozhodnuti-us-k%C2%A0uhradove-vyhlasce-nebude-mit-vliv-na-uhradu-poskytnute-pece_13146_3438_1.html

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Zákon č. 48/1997 o veřejném zdravotním pojištění ... [Act no. 48/1997 Coll. on Public Health Insurance...] Available at: <https://www.zakonyprolidi.cz/cs/1997-48?text=dohodovac%C3%AD+ř%C3%A0zen%C3%AD>

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