

CNS 37/2018

Opinion in relation to the inquiry about the possibility of providing a patient's room number to anyone who requests this information from a hospital center

A letter from a body in the field of health is presented to the Catalan Data Protection Authority, in which a report is requested to this Authority on the possibility of providing a patient's room number to people who ask a hospital center for this information.

Having analyzed the request, which is not accompanied by more information, in view of the current applicable regulations and the report of the Legal Counsel, the following is ruled.

I

(...)

II

The inquiry refers to the possibility of providing a patient's room number to people who request this information from a hospital centre.

According to the consultation, several possibilities would have been raised in relation to this issue: Ask the patient, at the time of admission to the hospital, for express consent to be able to provide this information; not provide this information to anyone; finally, give the information whenever a kinship relationship is proven.

Given the consultation in these terms, it is necessary to start from the basis that, according to article 4.1) of Regulation (EU) 2016/679, of 27 April, general data protection (RGPD), in force since 25 May 2016, and fully applicable from May 25, 2018 (Article 99 RGPD), are personal data "all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person;

The processing of personal data (art. 4.2 RGPD), in particular, the processing of data of natural persons who receive health care, is subject to the principles and guarantees of the regulations for the protection of personal data (RGPD). The patient's clinical history (HC) contains health data, that is: "personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information about their state of health;" (art. 4.15 GDPR).

From the data relating to the room where a patient is admitted, it is inferred, at the outset, that this person is admitted to a hospital and suffers from some illness or health problem. Even, depending on the center in question, the disease affecting the admitted patient could be deducted.

In addition, article 10.1 of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation, provides that the HC must have a number of 'identification and must include, among others, identification data of the patient and of the assistance (section a), which must include the "Room and bed number, in case of admission ."

Therefore, communicating the information subject to consultation (room number in which a patient is admitted) means providing data related to health and the healthcare treatment received by the affected or interested party (art. 4.1 RGPD), which is included in the HC of this one, and which is specially protected information.

Article 9 of the RGPD establishes a general prohibition of the processing of personal data of various categories, among others, data relating to health (section 1). Section 2 of the same article provides that this general prohibition will not apply when one of the following circumstances occurs:

"a) the interested party gives his explicit consent for the treatment of said personal data with one or more of the specified purposes, except when the Law of the Union or Member States establishes that the prohibition mentioned in section 1 cannot be lifted by the interested party;

b) the treatment is necessary for the fulfillment of obligations and the exercise of specific rights of the person responsible for the treatment or of the interested party in the field of labor law and of social security and protection, to the extent that this is authorized by the Law of the Union of the Member States or a collective agreement in accordance with the Law of the Member States that establishes adequate guarantees of respect for the fundamental rights and interests of the interested party;

c) the treatment is necessary to protect the vital interests of the interested party or another natural person, in the event that the interested party is not physically or legally able to give their consent;

d) the treatment is carried out, within the scope of its legitimate activities and with due guarantees, by a foundation, an association or any other non-profit organization, whose purpose is political, philosophical, religious or trade union, provided that the treatment refers exclusively to current or former members of such organizations or persons who maintain regular contact with them in relation to their purposes and provided that personal data is not communicated outside of them without the consent of the interested parties;

e) the treatment refers to personal data that the interested party has made manifestly public;

f) the treatment is necessary for the formulation, exercise or defense of claims or when the courts act in the exercise of their judicial function;

g) the treatment is necessary for reasons of an essential public interest, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, essentially respect the right to data protection and establish measures adequate and specific to protect the fundamental interests and rights of the interested party;

h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the worker's labor capacity, medical diagnosis, **provision of assistance or treatment of a sanitary** or social type, or management of the systems

and health and social care services, **on the basis of the Law of Union or the Member States** or by virtue of a contract with a healthcare professional and without prejudice to the conditions and guarantees contemplated in section 3;

i) the treatment is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health, or to guarantee high levels of quality and safety of health care and medicines or sanitary products, on the basis of the Law of the Union or of the Member States that establishes appropriate and specific measures to protect the rights and freedoms of the interested party, in particular professional secrecy,

j) the treatment is necessary for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, essentially respect the right to data protection and establish appropriate and specific measures to protect the fundamental interests and rights of the interested party."

For all this, it is necessary to take into account the regulatory provisions, to analyze whether the treatment and, in particular, the communication (art. 4.2 RGPD) of the personal information subject to consultation to the people who visit a patient, is enabled.

III

According to Article 3 of Law 21/2000:

"1. The holder of the right to information is the patient. **People related to the patient must be informed to the extent that the patient expressly or tacitly allows it.**

2. In the event of the patient's incapacity, he must be informed based on his level of understanding, without prejudice to also having to inform whoever is representing him.

3. If the patient, at the discretion of the doctor responsible for assistance, is not competent to understand the information, because he is in a physical or mental state that does not allow him to take charge of his situation, must also inform the family members or the people who are related to it."

Article 5 of Law 41/2002 provides that:

"1. The holder of the right to information is the patient. People related to him, for family or de facto reasons, will also **be informed, to the extent that the patient expressly or tacitly allows it.**

2. The patient will be informed, even in case of incapacity, in a manner adequate to his possibilities of understanding, complying with the duty to also inform his legal representative.

3. When the patient, according to the criteria of the attending physician, lacks the capacity to understand the information due to his physical or mental condition, the information will be made known to the persons linked to him for family or de facto reasons.

4. The right to health information of patients can be limited by the proven existence of a state of therapeutic need. (...)."

Regarding this, according to article 4.11 of the RGPD, the consent of the interested party is: "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either through a statement or a clear action affirmative, the processing of personal data that concerns you;".

According to Recital 32 of the RGPD: "Consent must be given through a clear affirmative act that reflects a free, specific, informed, and unequivocal manifestation of the interested party's will to accept the processing of personal data that concerns him, as a declaration in writing, including by electronic means, or a verbal declaration. (...). Therefore, silence, already marked boxes or inaction should not constitute consent. (...)."

Therefore, the RGPD generally excludes the possibility of expressing consent tacitly.

We note that the data protection regulations prior to the RGPD (Organic Law 15/1999, of December 13, on the protection of personal data -LOPD-), as well as Directive 95/46/EC, on data protection, repealed by article 94 RGPD), which was in force until the full application of the RGPD, provided for a strengthened protection regime for certain categories of personal data, among others, health data (article 8 Directive, and art. 7 LOPD), which remains in the RGPD.

Thus, the regulations prior to the RGPD were based on the general principle that the treatment of health data requires the express consent of the person affected, in the absence of a legal basis enabling the treatment. In any case, this regulatory regime (LOPD and Directive), prior to the RGPD, also did not enable the processing of health data based on tacit consent, so the RGPD does not represent a change in the regulatory regime in this sense.

Having said that, as it follows from the RGPD itself (art. 9.2.h) RGPD), the internal law of the States can provide for and enable the processing and communication of health data, when it is necessary for the provision of healthcare and medical diagnosis, among others. To this it should be added that, according to article 9.4 RGPD: "The Member States may maintain or introduce additional conditions, including limitations, with respect to the treatment of genetic data, biometric data or health-related data".

The patient autonomy regulations provide for the communication of patient health data related to the care process, to the people linked to the patient, either for family reasons or in fact (arts. 3.1 Law 21/2000 and 5.1 Law 41/2002).

It should be borne in mind that, in cases of physical or mental incapacity of the patient, the same regulations provide that it is necessary to inform "family members or people who are linked" (art. 3.2 Law 21/2000, and art. 5.3 Law 41/2002). Thus, for the purposes of the query formulated, in the event that a patient enters a hospital center in a state of physical or mental incapacity, this should provide information to the relatives or people linked to the patient who come to the center, because this is how it is foreseen the applicable regulations.

Even, in exceptional cases, the regulations on patient autonomy provide that consent to carry out interventions in the field of health must be obtained, by substitution, "from the relatives of this person or the persons that are linked to it" (art. 7.2 Law 21/2000, and art. 9.3 Law 41/2002). Obviously, this normative forecast implies that

these people referred to in the regulations should receive from the hospital certain information about the patient.

In this context, the people linked to the patient, for family or de facto reasons, who accompany him (either, for example, in visits and medical checks, surgical interventions, diagnostic tests, hospitalization, etc...) , they would have some involvement or participation in the patient care process. Taking this into account, it should be understood that the regulations on patient autonomy (art. 3.1 Law 21/2000 and art. 5.1 Law 41/2002) are sufficient legal authorization for hospitals to provide information to these people.

Thus, informing the people linked to the patient - for family or de facto reasons - who accompany him, would be a communication of data enabled not by the patient's consent, but by a rule with the rank of law. Specifically, for the purposes that concern us, informing these people of the room where the patient is admitted, has sufficient legal authorization.

This, without prejudice to the fact that the patient himself, who is the interested party and the owner of the health information contained in the HC (eg art. 4.1 RGPD, art. 3.1 Law 21/2000 and 5.1 Law 41/2002), may object to the people linked to him knowing this information, a possibility that the hospital center will have to take into account, for the purposes of the query formulated.

Thus, if a patient makes explicit to the hospital center their refusal to allow certain people in their environment to know which room they are in, the center would not be able to communicate the information that is the subject of the consultation, even in the case of people linked to the patient, for family or de facto reasons.

In any case, the people who accompany the patient will have to identify themselves, and they will have to prove to the hospital their relationship or relationship with the patient.

IV

Apart from this, it may be the case that the patient, while admitted to the hospital, is visited by people other than those related to the patient, either for family reasons or in fact, that they accompany

In this case, it should be borne in mind that the regulations studied (RGPD and patient autonomy regulations) do not enable a generalized communication of health data (as would, as has been explained, the information on the admission of a patient in a hospital center and the room number where he is) to third parties, other than those who accompany the patient in the care process (be they family members or other people linked to the patient).

Therefore, apart from the communication to people linked to the patient, for family or de facto reasons, who accompany him in the care process, the communication of the room number by the center to any other person who visits the patient, should have the express consent of the affected person or, where appropriate, of their family environment.

Given that the hospital center will not always be able to give the same answer to all the people who request to know the room where a patient is admitted (that is, in some cases it will be able to provide the information, and in others it should not facilitate it without the patient's consent), the center could ask the admitted patient or the

accompanying persons, the instructions necessary to manage visits to the patient. If applicable, the center could articulate an action protocol in relation to the issue raised, which would be advisable so that the center's workers know how to proceed when faced with the request for the information subject to consultation.

Thus, patients could be informed, at the time of admission, that the center will not, in principle, provide information about the room in which the patient is admitted to people other than the people who accompany and assist them, unless that the patient authorizes the center to provide this information.

For example, the patient could authorize the release of the room number they are in to anyone, or they could provide the center with a list of people to whom the information can be released, so that the center will release the information only to the people who can come to the center to visit the patient (whether all visits or just some), following the directions of the patient himself or his environment, and checking the identity of these people. Otherwise, if, for example, the patient states that he does not want to receive any visits, the center may proceed accordingly and not provide anyone with the details of the room where the patient is.

The center could also recommend - if appropriate, through said action protocol - that it is the patient himself or the people who accompany him, who communicate the information directly to third parties who may come to the center to visit him .

In short, the articulation of an action protocol by the hospital center would allow the workers of the hospital center to know how to proceed in the case at hand, in order to communicate the information (the room where admitted a patient), appropriately.

In accordance with the considerations made in this opinion in relation to the query raised, the following are made,

Conclusions

Hospitals can provide the patient's room number to people related to him, for family or de facto reasons, who accompany him in the healthcare process, unless they are aware that the affected person objects to it being provided this information

As for the rest of the people who request to know the room where a patient is admitted, the patient must authorize the center to communicate this information.

It is advisable to articulate a protocol so that the center's workers know how to proceed in these cases.

Barcelona, July 5, 2018