CNS 30/2019

Opinion regarding the consultation in relation to the need for the transfer of inmate-patient information between the health care staff and the penitentiary services staff

A consultation is presented to the Catalan Data Protection Authority on the need for the transfer of information about inmates-patients between the staff of the prison services bodies and the health care staff who provide professional services in the environment of the institution penitentiary

Having analyzed the request, which is accompanied by a copy of a Report on the issue raised (...), in view of the current applicable regulations and the report of the Legal Counsel, the following is ruled.

I

(...)

II

(...)

From the perspective of the protection of personal data, different issues can be pointed out in relation to the treatment of personal data of inmates-patients of penitentiary centers, in relation, specifically, to the communication of inmates' data between the prison faculty and the staff of the bodies of the penitentiary services, in the terms proposed by the consultation.

At the outset, the Report that accompanies the consultation, from 2017, refers to Organic Law 15/1999, of December 13, on the protection of personal data.
We agree that, at the time of issuing this opinion, the legal regime applicable to the protection of personal data is Regulation (EU) 2016/679, of April 27, general data protection (RGPD), in force since May 25, 2016, and fully applicable from May 25, 2018 (Article 99 GDPR).

It is also necessary to take into account the provisions of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (LOPDGDD).

According to the single repealing provision of the LOPDGDD:

> **"1. Without prejudice to the provisions of the fourteenth additional provision and the fourth transitional provision, Organic Law 15/1999, of December 13, on the protection of personal data is repealed."**

Particular attention must be paid to the provision of article 2.3 of the LOPDGDD, according to which:

> **"3. The treatments to which Regulation (EU) 2016/679 is not directly applicable, because they affect activities not included in the scope of application of European Union Law, will be governed by the provisions of its specific legislation if any and additionally by the established in the aforementioned**

> **regulation and in this organic law. In this situation, among others, the treatments carried out under the organic legislation of the general electoral regime, the treatments carried out in the field of penitentiary institutions and the treatments derived from the Civil Registry, the Property and Mercantile Registries."**

Therefore, the processing of personal data (art. 4.1 RGPD) of natural persons who are inmates in penitentiary centers and who receive health care (the "inmates-patients" referred to in the query), is subject to to the principles and guarantees of the personal data protection regulations, in particular, the RGPD and the LOPDGDD.

Among others, the processing of data of inmates in penitentiary centers is subject to the principle of lawfulness (art. 5.1.a) RGPD), as well as the principle of minimization, understood as the requirement that only the data to the extent that these are appropriate, relevant and limited to what is necessary for the fulfillment of the intended purpose (Article 5.1.c) RGPD). Likewise, the regulations require compliance with the principle of purpose limitation, according to which the data must be collected for specific, explicit and legitimate purposes, and cannot be subsequently treated in a manner incompatible with these purposes (art. 5.1 .b) RGPD).

**Article 6.1 of the RGPD establishes that there must be a legal basis that legitimizes the treatment, among others, if the consent of the affected person is available (art. 6.1.a) RGPD); or when "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (art. 6.1.c) RGPD); or when "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment"
(art. 6.1.e) RGPD).**

According to article 6.3 RGPD, the basis of the treatment indicated in article 6.1, letters c) and e), must be established by the Law of the European Union (art. 6.3.a)), or by the Law of the States members that applies to the data controller (art. 6.3.b)).

Given that the query refers to personal information that is treated by mental health care services ("interns-patients" or "interested persons", ex. art. 4.1 RGPD), it must be taken into account that they are health data: "data 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 RGPD).

For the purposes of data protection regulations, health data is subject to special protection. Thus, article 9 of the RGPD regulates the 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 9 provides that this general prohibition will not apply when one of the following circumstances occurs:

> **"(...)**
>
> **h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the worker's labor capacity, medical diagnosis, provision of health or social assistance or treatment, or management of health and social care systems and services, on the basis of
> Law of the Union or Member States or by virtue of a contract with**

a health professional and without prejudice to the conditions and guarantees contemplated in section 3;

(...)".

It will therefore be necessary to examine the provisions of the applicable regulations in order to analyse, from the perspective of the protection of personal data, the treatment referred to in the query, that is to say, the communication of health data of internal persons in penitentiary centers between the health care staff who provide services there and the "different teams and bodies of the penitentiary services", in the terms proposed in the consultation.

III

At the outset, it is necessary to refer to the treatment of health data for healthcare purposes by the health services of penitentiary centers.

According to article 1 of Organic Law 1/1979, of September 26, general penitentiary (LGP):

"The penitentiary institutions regulated in this Law have as their primary purpose the re-education and social reintegration of those sentenced to prison terms and penal measures, as well as the retention and custody of detainees, prisoners and prisoners.

They are also in charge of assistance and aid work for inmates and released persons."

According to article 3.4 of the LGP "The penitentiary administration will ensure the life, integrity and health of the inmates."

According to article 36 of the LGP:

"1. In each center there will be at least one general practitioner with psychiatric knowledge, in charge of taking care of the physical and mental health of the inmates and of monitoring the hygiene and health conditions in the establishment, who may, as the case may be, request the collaboration of specialists (…).

2. In addition to the medical services of the establishments, the inmates may be assisted in hospital and care institutions of a penitentiary nature and, in cases of need or urgency, in other hospital centers.

(...)."

According to article 214 of the Penitentiary Regulations, approved by Royal Decree 190/1996, of February 9:

"1. All inmates, upon entering the Establishment, will be examined by a doctor. (…).

2. The result will be recorded in the Income Book and in the individual clinical history, which must be open to all internal staff."

According to article 84 of Decree 329/2006, of September 5, which approves the Regulations for the organization and operation of criminal enforcement services in Catalonia:

"1. All inmates must have a medical history open, which will be opened at the time of their admission to a penitentiary center, and which will accompany the inmate if a transfer is made to another center or establishment.

2. The medical history must be unique for each intern.

3. The clinical history will be the basic instrument that will collect the data relating to the care process of each patient.

(...)

6. Regarding the definition and treatment of the clinical history, its content, uses and conservation, as well as the right of the interns to information and access to their clinical history, confidentiality of the data and the informed consent, it will be necessary to take into account, in general, the provisions contained in the legislation on information rights concerning health, patient autonomy and clinical documentation and the regulations in force regarding the protection of personal data and, in particular, those referring to the protection of data of a medical and health nature."

In view of these forecasts, reference must be made to Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation, and to Law 41/2002, of 14 November, basic, regulating patient autonomy and rights and obligations in the field of information and clinical documentation.

According to article 14.1 of Law 41/2002: "The clinical history includes all the documents relating to the care processes of each patient, with the identification of the doctors and other professionals who have intervened in them, with the aim of to obtain the maximum possible integration of each patient's clinical documentation, at least within the scope of each center."

According to article 15.2 of Law 41/2002: "2. The clinical history will have as its main purpose the facilitation of health care, recording all those data that, under medical criteria, allow accurate and up-to-date knowledge of the state of health."

According to article 16.1 of Law 41/2002: "1. The clinical history is an instrument primarily intended to guarantee adequate assistance to the patient. The healthcare professionals of the center who carry out the diagnosis or treatment of the patient have access to the patient's clinical history as a fundamental tool for their adequate assistance.

In the same sense, article 11 of Law 21/2000 provides that:

"1. The clinical history is an instrument primarily intended to help guarantee adequate assistance to the patient. For this purpose, the care professionals of the center who are involved in the diagnosis or treatment of the patient must have access to the clinical history.

2. Each center must establish the mechanism that makes it possible that, while assistance is provided to a specific patient, the professionals attending to him can, at all times, have access to the corresponding clinical history. (...)."

With regard to healthcare provision in the penitentiary field, it is necessary to refer to article 68.1 of Decree 329/2006, according to which:

> **"1. Health care in the penitentiary field, which must have a comprehensive character, with a biopsychosocial orientation that contemplates both the prevention and promotion of the health of the general incarcerated population as well as the healing and rehabilitation of the sick, must integrate the primary and specialized care resources, hospital and socio-health services that are necessary to guarantee continuity of care for inmates and parolees."**

Given that the consultation refers specifically to the field of mental health, we refer to article 77 of the same Decree 329/2006, according to which:

> **"1. In accordance with the needs that are detected, in order to avoid the release of the inmates, it will be necessary to seek the organization inside the establishments of those consultations of medical specialties that have higher demand**
>
> **2. The mental health assistance of the inmates must preferably be dispensed through the means, own or arranged, of the health network for public use, and will include the levels of assistance that are determined at any given time to the current regulations.**
>
> **(...)."**

Decree 399/2006, of October 24, which assigns to the Department of Health the functions in matters of health and sanitation for persons deprived of liberty and minors and young people interned in juvenile justice centers, and integrate penitentiary and juvenile justice health services into the public health system, provides for the following in its article 1:

> **"1.1 The Department of Health, through the Catalan Health Service, must guarantee, through professionals, the centers, services and establishments that make up the public health system, the right of persons deprived of liberty and minors and young people admitted to comprehensive health care, including both health promotion and disease prevention as well as the necessary curative and rehabilitative actions,(...)."**

And according to article 2 of Decree 399/2006:

> **"1. (...), and the care functions of the health teams are ascribed to the Department of Health, through the Catalan Health Service and the Catalan Institute of Health, in the terms provided for in Law 15/1990, of July 9, on the health system of Catalonia, and in the regulations that implement it and in this Decree.**
>
> **3. The health staff of the Department of Justice assigned to the penitentiary health services are functionally attached to the Catalan Institute of Health (...)."**

Therefore, it is necessary to start from the basis that the healthcare professionals who treat inpatients and provide them with the corresponding medical assistance in the terms required by the regulations, are able to access and process the health information contained in the HC of the internal for the purposes of diagnosis and medical treatment of the patient, under the terms and conditions provided for by the patient autonomy legislation (Law 21/2000 and Law 41/2002).

Specifically, according to article 12 of Law 16/2003, of May 28, on cohesion and quality of the National Health System: "Primary care is the basic and initial level of care, which guarantees the globality and continuity of care throughout the patient's life, acting as case manager and coordinator and flow regulator.
It will include health promotion activities, health education, disease prevention, health care, health maintenance and recovery, as well as physical rehabilitation and social work."

Primary care includes, among others, mental health care (art. 12.2.h) Law 16/2003). Specialized care services also include mental health care (art. 13.2.g) Law 16/2003).

Annex II of Royal Decree 1030/2006, of September 15, which establishes the portfolio of common services of the national health system and the procedure for updating it, provides that:

> "Primary care is the basic and initial level of care, (...) It will include health promotion activities, health education, disease prevention, health care, health maintenance and recovery, as well as physical rehabilitation and social work.
>
> All these activities, aimed at individuals, families and the community, under a biopsychosocial approach, are provided by interdisciplinary teams, guaranteeing the same quality and accessibility, as well as continuity between the different areas of attention in the provision of health services and coordination between all the sectors involved. (...)."

According to article 68.1 of Decree 329/23006:

> "1. Health care in the penitentiary field, which must have a comprehensive character, with a biopsychosocial orientation that contemplates both the prevention and promotion of the health of the general incarcerated population as well as the healing and rehabilitation of the sick, must integrate the primary, specialized, hospital and socio-health care resources that are necessary to guarantee continuity of care for inmates and parolees."

Thus, patients who are inmates in penitentiary centers receive health care in the field of mental health - to which the consultation makes special reference -, both from primary care (art. 74 Decree 329/2006) , as well as specialized care (arts. 76 and 77 Decree 329/2006).

Regarding the organization of health care in penitentiary centers, article 72 of the same Decree 329/2006 states that: "1. The health services of the penitentiary centers will be organized under the direction of a coordinator of the health area, who will be responsible for organizing, directing and supervising all the general actions and the daily activity of the of the establishment's health professionals. (...)."

As this Authority has done on previous occasions (Dictamen CNS 18/2017 and Dictamen CNS 30/2018, in which the treatment of health data is analyzed in the context of the EAP of penitentiary centers, available at www.apd.cat), it should be borne in mind that the different health professionals who are part of the EAP of penitentiary centers and are involved in the healthcare treatment of the inmates,

they must be able to access and process certain health information, contained in the HC of the patients in the penitentiary center, those they care for.

Apart from the assistance work carried out by the EAP, in the case at hand, in which the consultation makes special mention of mental health, reference must be made to "special establishments", in the terms of article 11 of the LGP:

> **"The special establishments are those in which the healthcare character prevails and they will be of the following types: a) Hospital centers. b) Psychiatric centers. c) Centers for social rehabilitation, for the execution of penal measures, in accordance with the legislation in force in this matter."**

According to article 183 of the Penitentiary Regulation "Prison Psychiatric Institutions or Penitentiary Units are those special centers intended to comply with the security measures privative of freedom applied by the corresponding Courts."

According to article 185.1 of the Penitentiary Regulations:

> **"1. To guarantee an adequate level of assistance, the Penitentiary Psychiatric Institutions or Units will have, at least, a multidisciplinary team, made up of psychiatrists, psychologists, general practitioners, nurses and social workers who are necessary to provide the specialized assistance required by patients interned in those**
>
> **They will also have the professionals and auxiliary personnel necessary for the execution of the rehabilitation programs."**

Given these forecasts, and in line with what has been stated regarding the EAPs, it is clear that the multidisciplinary teams of psychiatric units referred to in the report accompanying the consultation, are involved in the care treatment of people internal in these special centers and, therefore, the professionals who are part of these Teams (art. 185 Penitentiary Regulations) must be able to access and process certain health information, contained in the HC of the patients they attend to, in the terms provided for in the patient autonomy legislation.

In short, there can be no doubt about the legality and concurrence of sufficient authorization (art. 9.2.h) RGPD) so that the healthcare professionals who attend and treat the inmates-patients of penitentiary centers can access and process data from health (HC) of these for assistance purposes, which is the main purpose of the HC (arts. 15.2 and 16.1 of Law 41/2002, and 11.1 Law 21/2000).

All this, without prejudice to the fact that, based on the principle of proportionality, in its minimization aspect (art. 5.1.c) RGPD), this access must occur to health information that is relevant, adequate and limited to what is necessary for the care purpose which, as is clear from the patient autonomy legislation, is the main purpose for which the HC is configured.

A different issue is that the health information (HC) of the patients that, in the terms provided for in the regulations, must be treated by healthcare professionals in order to provide assistance to interns-patients, must be shared with the "different teams and organs of the penitentiary services", a matter to which we refer below.

Having said that, it is necessary to take into account the organizational model and structure of prison centers and services (Title III Decree 329/2006), which includes several individual bodies (arts. 12 to 19 Decree 329/2006), as well as several collective bodies members (Board of Directors, Treatment Board, Disciplinary Commission, ex. arts. 20 et seq. Decree 329/2006), in addition to all the "staff at the service of the competent Administration in matters of criminal enforcement in Catalonia " (arts. 39 et seq. Decree 329/2006).

This structure entails in each case a series of functions for the exercise of which, the different professionals will have to have certain information, also personal information subject to the RGPD and the LOPDGDD, for the exercise of the same .

The Report that accompanies the consultation specifically refers to (...), the Treatment Board and the multidisciplinary Teams, which we refer to below.

According to article 111 of the Penitentiary Regulations:

> **"1. The tasks of observation, classification and prison treatment will be carried out by the Treatment Boards and their decisions will be executed by the Technical Teams, whose composition and functions are determined in Section 2 of Chapter II of Title XI of this Regulation.**
>
> **2. For the proper execution of these activities by the Technical Teams, the collaboration of the rest of the professionals in the penitentiary field will be counted on. (…).”**

Article 30.1 of Decree 329/2006 specifies the composition of the Treatment Board:

> **"1. The Treatment Board must be chaired by the director of the penitentiary center and composed of the following members:**
>
> **a) The Deputy Director of Treatment. b) The legal technical secretary. c) The coordinator of the health area. d) The coordinator of the multidisciplinary teams, if any, and the head of specialized care programs. e) A psychologist. f) A lawyer. g) The teaching director. h) The head of social work programs. i) The head of social education programs.”**

Article 32 of Decree 329/2006 specifies the functions of the Treatment Board:

> **"1. The Treatment Board, without prejudice to the competences of the management center and the multidisciplinary teams, must exercise the following functions:**
>
> **a) Approve the treatment programs and the individualized prison intervention models for each inmate, defining the activities and programs that he/she must carry out in accordance with his/her personal circumstances and the approximate duration of the conviction or precautionary measure of deprivation of liberty.**
>
> **b) Evaluate and monitor the results of the programs.**

c) Propose to the management center the application of the closed regime to those sentenced and remanded in custody in which the circumstances provided for by the penitentiary legislation meet, with the mandatory prior reports of the head of services and from the multidisciplinary team of the corresponding residential unit.

d) Formulate, in accordance with the evaluation of the static and dynamic variables of each penalty, the reasoned proposals for the initial level of classification and destination in the corresponding establishment.

e) Propose to the management center, in a reasoned report, the progression or regression of grade and, exceptionally, the transfer to another penitentiary center. The transfer may also be reasonably proposed when there are treatment reasons that advise it.

f) Adopt the agreements it deems relevant regarding the requests and complaints made by the inmates to the multidisciplinary teams regarding their classification, treatment or intervention program.

g) To propose to the Disciplinary Commission, in view of the proposal of the multidisciplinary team, the reduction, postponement of the execution or suspension of the effectiveness of the disciplinary sanctions that may disturb the treatment or the study of the personality of the sanctioned person, and also the reduction of the cancellation terms when there are well-founded reasons to expect that this measure may have a favorable influence on the treatment.

h) Grant prison exit permits, with the prior report of the multidisciplinary team, requesting the authorization of the prison surveillance judge or the management center, as appropriate.

i) Inform and present to the prison surveillance court the proposals formulated by the multidisciplinary teams, regarding prison benefits and conditional release.

j) Designate the interns who must perform personal services in common auxiliary services of the establishment.

k) Approve, with the prior evaluation of the job offer carried out by the Center for Initiatives for Reintegration and the reports issued by the multidisciplinary teams, the access of the interns to the vacant jobs in the productive workshops or the existing places in the training courses for work.
Likewise, it is up to him to adopt the resolutions of suspension or termination of the employment relationship of a special nature for the interns/workers, for reasons of treatment.

l) Inform and present to the Board of Directors the proposal for the annual program of activities of the penitentiary center, drawn up in accordance with the proposals formulated by the multidisciplinary teams.

m) Exercise all other powers attributed to it by prison legislation or its development rules and, in general, those relating to the observation, classification and treatment of inmates that are not attributed to other bodies.

(...).”

The multidisciplinary Teams, "will be the units of study, proposal and execution that the Treatment Board will have. They will be in charge of both issuing the proposals in view of which the aforementioned collegial body will take, in general terms, the agreements for the adoption of the necessary measures to execute the treatment programs or the individualized models of "intervention, as well as to execute them, under the immediate and direct control of the coordinator of these teams or, where appropriate, of the head of specialized care programs" (art. 36 Decree 329/2006).

According to article 37 (sections 2 and 3), of Decree 329/2006, they form part of the Multidisciplinary Team:

> **"a) The coordinator of the multidisciplinary teams, if any, or the head of specialized care programs. b) The psychologist attached to the team. c) The lawyer attached to the team. d) The educator attached to the team. e) A teacher. f) A doctor. g) A social worker. h) An occupational monitor and/or labor inserter. i) A sports instructor/VAT. j) The head of unit or the coordinator of specialized unit.**

> **3. Those units assigned to them will include the following professionals in the team meetings:**
>
> **a) A psychiatrist. b) A nurse. c) A pedagogue. d) A criminologist/oga."**

With regard to the functions of the Multidisciplinary Teams, which according to article 37.7 of Decree 329/2996 are "(...) functions of guidance, advice and individualized evaluation of the evolution of the interns assigned to them in relation to the treatment programs and intervention models that have been designed", we refer to the provisions of article 38 of Decree 329/2006.

Penitentiary treatment is defined as the "set of activities directly aimed at achieving the re-education and social reintegration of prisoners" (art. 59.1 LGP).

According to article 60.1 of the LGP "1. The services in charge of the treatment will endeavor to know and treat all the peculiarities of the personality and environment of the prisoner that may be an obstacle to the purposes indicated in the previous article."

According to article 62 of the LGP: "The treatment will be based on the following principles:

> **a) It will be based on the scientific study of the constitution, temperament, character, aptitudes and attitudes of the subject to be treated, as well as his dynamic-motivational system and the evolutionary aspect of his personality, leading to a global judgment of the same, which will be recorded in the intern's protocol.**

b) It will have a direct relationship with a diagnosis of criminal personality and with an initial prognostic judgment, (...).

c) It will be individualized, consisting of the variable use of medico-biological, psychiatric, psychological, educational and social methods, in relation to the inmate's personality.

(...).”

In application of these principles, article 20.2 of the Penitentiary Regulation provides that:

"2. (…) By the Treatment Board, prior to the report of the Technical Team, the protocol data will be checked and an individualized treatment program will be formulated (…).”

Given these and other regulatory provisions (among others, arts. 81, 103 to 106, or 156 Penitentiary Regulation), it is clear that the applicable regulatory framework articulates the decision-making on inmates based on the principle of individualization of its treatment (art. 62.c) LGP).

VI

Given the functions and composition of the Board and the Teams, it is clear that all the professionals who are part of the Board and the Teams are assigned functions of guidance, assistance or advice to the interns, and that all of them are involved, each from its technical side, in the articulation of individualized intervention models for each internal person, in the terms provided for in the regulations.

All the professionals who are part of the Board and the Teams are assigned functions of guidance, assistance or advice to the interns, and all of them are involved, each from their technical side, in the articulation of the individualized models of intervention of each internal person, in the terms provided for in the regulations.

As an example, the regulations determine the sanctions that can be imposed on internal persons (art. 42 LGP), in particular, it provides for the "Privation of walks and common recreational acts, as long as they are compatible with physical health and mental (...)". The professionals who are part of the Teams and of the Board who, under the terms provided for in the regulations, will have to take the decision on a sanction for an inmate, must have the health information about him, necessary to take the corresponding decision .

Likewise, according to article 16 of the LGP:

"Whatever the center in which the admission takes place, a complete separation will be carried out immediately, taking into account the sex, emotionality, age, antecedents, physical and mental state and, with respect to the prisoners, the treatment requirements.

Consequently:

(...)

d) Those with illness or physical or mental deficiencies will be separated from those who can follow the normal regime of the establishment.”

Also by way of example, according to article 43 of the LGP:

"1. The sanction of isolation will be fulfilled with a report from the doctor of the establishment, who will monitor the inmate daily while he remains in that situation, informing the Director about his state of physical and mental health and, in his case, about the need to suspend or modify the sanction imposed

2. In cases of illness of the sanctioned person, and as long as the circumstances advise it, the effectiveness of the sanction that consists of internment in an isolation cell will be suspended, until the inmate is discharged or the corresponding collegiate body deems it appropriate , respectively. (...)"

These multidisciplinary bodies are formed, on the one hand, by personnel from the health field and, on the other hand, by other professionals from other fields of competence different from the health field, such as teaching professionals and educators, lawyers, social workers, occupational monitors, etc.

From here, it will be up to the health personnel to have access to the set of health information of the inmates and to provide the other professionals of the Board or the Teams with that information from the HC that may be relevant and necessary, in each case, so that these professionals can carry out their duties and carry out the individualized assessments of each intern, which are relevant in each case.

In this sense, from the perspective of the principle of minimization (art. 5.1.c) RGPD), the communication of an inmate's health data by the health personnel who attends him and who is part of the Board or of the Teams, to the rest of the professionals of these bodies, will have to limit themselves to those data from the inmate's HC that are necessary to make the appropriate decision about their prison situation, and to make the decisions individualized that corresponds (maintenance of the degree, transfers, activities you can carry out...).

Although the health personnel attending to the patient must have all the information about the health care (diagnosis and prognosis of the patient, medication and pharmacological treatment provided, family history recorded in the HC, etc.), the rest of professionals from the Board or the Teams must access only that medical information that may influence the measure to be taken.

In conclusion, for all that has been said, the regulatory framework examined (LGP, Penitentiary Regulations and Decree 329/2006), enables the health personnel who are part of the Treatment Board or the Teams, to share with the rest of the professionals these bodies those health data of the intern that are adequate, relevant and limited to the fulfillment of the functions that correspond to them, in relation to the individual assessment of each intern.

VII

Having said that, aside from the processing of health data by the professionals who are part of the Board and the Teams to deal with the individual prison situation of each inmate, it cannot be ruled out that the processing of data by the HC of the inmates responds to other purposes.

Thus, given the information available, we cannot rule out that within the framework of the functions that the regulations attribute to the Board and the Teams, they must perform

studies, proposals, planning of actions in relation to the general incarcerated population, etc.

In the event that the access to health data of the people incarcerated in penitentiary centers by the professionals of the Board or the Teams is not for the purpose of monitoring, treatment and specific and individualized assistance to the affected person, it is that is to say, the taking of specific decisions and measures regarding an inmate in the terms provided for in the studied regulations, article 16.3 of Law 41/2002 must be taken in

> **"3. Access to clinical history for judicial, epidemiological, public health, research or teaching purposes is governed by the provisions of Organic Law 15/1999, of December 13, on the Protection of Personal Data, and Law 14/1986, of April 25, General Health, and other applicable rules in each case. Access to the clinical history for these purposes obliges to preserve the personal identification data of the patient, separate from those of a clinical-care nature, so that, as a general rule, anonymity is ensured, unless the patient himself has given his consent not to separate them."**

In the same sense, article 11.3 of Law 21/2000.

The patient autonomy regulations allow access to health data from the HC for the aforementioned purposes (art. 16.3 Law 41/2002), provided that consent is available or that the patient's identifying data is preserved separate from the rest (clinical-assistance information), in the terms provided for in said regulations.

Therefore, in the event that the treatment of inmates' HC health data is intended, for example, to carry out studies or research to plan certain actions in the penitentiary field, this treatment would require separating the identifying data of the interns-patients affected by the rest of the information or have their consent, in the terms provided for in the aforementioned regulations.

At this point it is necessary to mention the provision of additional provision 17a of the LOPDGDD, relating to the processing of data in health research and the criteria applicable to this research, to which we refer. We note that this Authority has analyzed the scope of additional provision 17a of the LOPDGDD in Opinions CNS 15/2019 and CNS 18/2019, to which we refer.

VIII

According to the Report that accompanies the consultation: "Regarding the inmates in the open environment who are cared for in the health facilities of the community, the necessary and safe means of communication should be articulated, so that the information reaches the competent administrative bodies through the bodies responsible for primary care or mental health, as appropriate."

Regarding this, according to article 88 of the Penitentiary Regulations:

> **"1. As a general rule, inmates in the open regime will receive the health care they need through the extra-penitentiary public health network.**
> **2. The Penitentiary Administration will ensure that the inmates use these services correctly and take care of their health, as a very important aspect of their rehabilitation and, to this end, will plan and execute prevention and health education programs.**

3. The establishment's medical services will carry out the necessary follow-up and arrange the precise coordination of the institution's health services with those outside, within the framework of the agreements signed by the Penitentiary Administration for this purpose. The social workers of the Center will help and guide the inmates in carrying out the necessary procedures to use the extra-penitentiary public health network."

Likewise, according to article 185.2 of the Penitentiary Regulations: "2. The Penitentiary Administration will request the necessary collaboration from other Public Administrations with competence in the matter so that the psychiatric treatment of the inmates continues, if necessary, after their release and so that post-penitentiary social assistance of a psychiatric nature is guaranteed, as so that patients whose personal and procedural situation allows it can be integrated into the rehabilitation programs and existing intermediate structures in the community model of mental health care."

And according to article 83.1 of Decree 329/2006: "1. The inmates who enjoy the open living regime will receive the health and social health care they need through the health and social health network for public use. The public entity managing penitentiary healthcare will carry out the coordination of this healthcare provision, which, in order to maintain continuity of care, will carry out the arrangements that are appropriate with the establishment's medical services and, where appropriate , with the social workers who know the internal person."

Given these forecasts, it is clear that the regulations enable an informational flow of health data of the inmates who are in an open regime between the health services external to the center that must continue to provide assistance to the patient and the medical services of the penitentiary center, with the purpose of ensuring continuity of care. This, without prejudice to the fact that there may also be an information flow from the center's health services to external services for assistance purpos

In relation to this flow of information, the regulations provide that it is up to the center's medical services to monitor and coordinate the assistance that the patient receives in an open regime.

In any case, the information flow of data from the patient's HC that must be produced and articulated for the continuity of health care to this patient outside the penitentiary center must comply with the principles and guarantees of the regulations of data protection and the HC management regime provided for in the patient autonomy legislation.

Finally, it should be remembered that the data protection regulations impose a general duty of secrecy (art. 5.1.f) RGPD), which obliges anyone who processes personal data, in this case, the different professionals who attend to the inmates, to respect the confidentiality of patient information included in the HC (art. 9.3 RGPD, art. 7.1 Law 41/2002, and art. 5.1 Law 21/2000).

Likewise, according to article 215.1 of the Penitentiary Regulation: "The data included in the individual clinical history will have a confidential character, they must be correctly filed and guarded, being only accessible to authorized personnel."

Therefore, the aforementioned regulation imposes on all care professionals in penitentiary centers a duty of secrecy regarding the health information, in this case, of people incarcerated in penitentiary centers.

In accordance with the considerations made in this opinion the following are made,

Conclusions

The processing of data of physical persons who are inmates in penitentiary centers and who receive health care ("inmates-patients"), as well as those who are in an open regime, is subject to the principles and guarantees of the protection regulations of personal data, specifically, the RGPD and the LOPDGDD.

The regulatory framework examined (LGP, Penitentiary Regulation and Decree 329/2006), enables the health personnel who attend to the patient and are part of the Treatment and Equipment Board, to share with the rest of the professionals who participate in these bodies that data of the health of the intern that are adequate, relevant and limited to the fulfillment of the functions that correspond to them, in relation to the individual assessment of each intern.

Barcelona, July 17, 2019