

Legal report in relation to the proposal to modify letter b) of section 1 of the fifteenth additional provision of Law 12/2007, of October 11, on social services

Background

A letter is submitted to the Catalan Data Protection Authority in which it is requested that the Authority issue a report on the proposed modification of provision with reference number M048, relating to the modification of letter b) of section 1 of the fifteenth additional provision of Law 12/2007, of October 11, on social services, to include it in the Draft Law on fiscal and financial measures for the year 2023.

The Project is accompanied by the general report and the impact assessment report.

Having analyzed the Project, given the current applicable regulations and in accordance with the report of the Legal Counsel, the following is reported.

Legal Foundations

I

(...)

II

On October 7, 2021, this Authority issued a report with reference number PD 10/2021 (available on the website <https://apdcat.gencat.cat>), in which the proposal for inclusion in the Draft law of fiscal and financial measures for 2022 of the addition of a new additional provision, the fortnight, to Law 12/2007, of 11 October on social services.

The proposal that is now submitted to the report constitutes a modification of the wording of the fifteenth additional Provision, the subject of that report.

At the time of issuing this report, the fifteenth additional provision of Law 12/2007, of October 11, on social services provides the following:

"Data communication between health services and social services of the public system

1. In order to guarantee the effective comprehensive care of the people served by the Network of Social Services of Public Care and the health services of the public system, the communication of data between the aforementioned services is enabled, without the consent of the interested persons, in the terms provided for in the following sections:

a) *The social services are enabled to communicate to the health services the data related to the people served by both systems, of an identification and contact nature, and also those related to the social services received that may have an impact on health and are necessary to guarantee a comprehensive and integrated care process. Health professionals involved in the diagnosis or treatment of the interested person, duly accredited, can access the information.*

b) *The health services are enabled to communicate to the social services the data related to the people served by both systems, of an identification and contact nature, and also the data of their clinical history that may affect personal autonomy -whether due to dependency or disability-, to detect and intervene in situations of social risk that may require the activation of social benefits and that require health information to be effective, and in order to guarantee a process comprehensive and integrated care.*

Social service professionals involved in the monitoring and evaluation of the citizen, duly accredited, can access the information.

2. The entities responsible for communications must apply technical and organizational measures appropriate to the sensitive nature of the information, in order to guarantee and periodically verify the confidentiality, integrity, traceability, availability and authenticity of the information, and also the exercise of rights and the duty to inform interested parties.

Traceability must allow the control of access to the information system by the profiles of authorized users, the identity and professional category of the user, the date and time when the access took place, the action taken, the data affected and the reason for the access.

The responsible entities must facilitate the consultation of the information on the traceability of their data to the affected persons.

3. The professionals of the social and health services must maintain the duty of secrecy regarding the information to which they have access, even once their relationship with the entity for which they provide services has ended.

III

In accordance with what is contained in the documentation sent, it is intended to modify letter b) of section 1 of the fifteenth additional provision of Law 12/2007, of October 11, on social services in order to "*clarify the scope of the communication of data between the Network of Social Services of Public Care and the health services of the public Health system regarding the services received by the people served between both systems, in order to delimit the situations and circumstances which must be complied with in order for the communication of data to be effective and to avoid giving rise to various interpretations and situations that are not always well defined that condition their practical application*".

The proposed proposal aims to modify letter b) of section 1 of the fifteenth additional provision of Law 12/2007, of 11 October, on social services with the following wording (the modifications are underlined):

"b) The health services are enabled to communicate to the social services the data related to the people served by both systems, of an identifying nature , of contact, and also the data of their clinical history that may affect autonomy personal - whether due to dependency or disability - and to detect and intervene in situations of social risk and/or vulnerability that may require the activation of social benefits and that require health information to be effective, as well as interventions and actions in order to guarantee a comprehensive and integrated care process. The information can be accessed by social services professionals involved in the monitoring and evaluation of the citizen and health professionals attached to the social services system involved in the treatment and assistance of the person concerned, duly accredited."

At the outset, it is positively assessed that the objective of the proposal to amend letter b) of section 1 of the fifteenth additional provision of Law 12/2007, of October 11, on social services is to clarify what are the assumptions that the regulations enable to communicate data originating from health services to social services, and the professionals who can access them, especially if the need to reflect situations that occur in practice and that are they could understand not included, in accordance with what is stated in the sent impact assessment report.

However, from the perspective of data protection regulations, it is necessary to refer to certain issues that have been identified and that should be clarified in the proposed text.

In advance, note that insofar as the structure of the text of the proposed amendment shows that there are two parts - a first part relating to the categories of data and purposes for which health services are enabled the communication of patient data to social services, and a second part where the professional profiles that can access the information are defined -, the analysis in this report will follow this same structure.

Regarding the first part, that is to say, the one relating to the categories of data and the purposes for which the communication of patient data by health services to social services is enabled, the text of the proposal introduces a a conjunction which is considered to lead to the understanding that it is an enumeration, when this is not apparent from the information contained in the reports sent with the query.

In particular, we refer to the modification that is underlined in the following sentence:

"The health services are enabled to communicate to the social services the data related to the people served by both systems, of an identification and contact nature, and also the data of their clinical history that may affect personal autonomy - whether due to a dependency or disability situation - and to detect and intervene in situations of social risk and/or vulnerability that may require the activation of social benefits and that require health information to be effective, as well as interventions and actions in order to guarantee a care process integral and integrated [...]".

The fact of replacing the comma in the original text with a conjunction between the categories of data enabled and the purposes for which communication from health services to social services is enabled does not achieve the objective of the modification referred to in impact assessment report, insofar as it introduces an enumeration of two different issues: on the one hand the affected data (those that may affect personal autonomy) and on the other hand the purposes for which they can be communicate ("*detect and intervene in situations of*

social risk and/or vulnerability that may require the activation of social benefits and that require health information to be effective " and " interventions and actions in order to guarantee a care process comprehensive and integrated " by another).

For this reason, it is proposed to preserve, in relation to this matter, the original text. In other words, the following wording is proposed:

"The health services are enabled to communicate to the social services the data related to the people served by both systems, of an identification and contact nature, and also the data of their clinical history that may affect personal autonomy - whether due to dependency or disability - to detect and intervene in situations of social risk and/or vulnerability that may require the activation of social benefits and that require health information to be effective, as well as interventions and actions to guarantee a comprehensive and integrated care process [...]"

IV

Regarding the second part of the text of the proposal, the one relating to the professionals who can access the information that, where appropriate, communicates the health services to the social services, the Department of Social Rights proposes to include the part that is underlined below:

"[...] The social services professionals involved in the monitoring and evaluation of the citizen and the health professionals attached to the social services system involved in the treatment and assistance of the person concerned , duly accredited, can access the information" .

In other words, an express reference is made to the fact that health professionals attached to the social services system can also access this information.

It must be taken into account that health professionals attached to the social services system can already be considered included, in the current wording of the precept, in the mention of " *social services professionals* ".

It should be borne in mind that article 24.3 of Law 12/2007, of 11 October, on social services establishes that the Portfolio of social services must define, among other issues, the establishment or the professional team that it has to manage each social service, the profiles and the ratios of the team's professionals.

Thus, for example, among the benefits of the network of public care social services referred to in the Social Services Portfolio, there are certain services such as the reception center service (1.2.1.3), home service residence for the elderly of a temporary or permanent nature (1.2.3.3.1) or the early care service (1.2.5.1), in which it is expressly provided that the staff who make up the professional team include health professionals (doctor, nurse, physiotherapist...).

For this reason, a priori, it seems that including the possibility that health professionals attached to the social services system, involved in the treatment and assistance of the person concerned can access the information communicated by the health services may be

strictly unnecessary in to the extent that these professionals assigned to social services are part of the professionals who integrate them.

However, the mention of health professionals can offer greater legal certainty by clarifying that these attached health professionals must also be considered included within social service professionals. For this reason, a wording like the following is proposed:

"[...] Social services professionals involved in the monitoring and evaluation of the citizen can access the information, including health professionals attached to the social services system involved in the treatment and assistance of the person concerned, duly accredited".

conclusion

Having examined the proposal to modify letter b) of section 1 of the fifteenth additional provision of Law 12/2007, of October 11, on social services, it is considered adequate to the provisions established in the regulations on protection of personal data, as long as the considerations made in this report are taken into account

Barcelona, October 5, 2022.

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