

The Right to Health Care for People with Oncological Diseases as well as for People Suspected of Cancer in the Context of COVID-19

Cătălina Georgeta Dinu

Faculty of Law, Transilvania University of Brasov, Romania, catalina13.dinu@gmail.com

ABSTRACT: In the context of Covid-19 it was emphasized that patients with oncological diseases who need to be diagnosed following hospital medical investigations, as well as those who are already registered with this serious condition and need specialized treatment, should be allowed the right to health care, given that, although strictly speaking, it is not an emergency, medical investigations or treatments cannot be rescheduled and may necessarily require hospital treatment. Chronic hospitalizations have been discontinued, with the exception of neoplastic patients, whose curative or rebalancing treatment cannot be delayed. However, in Romania, the Ministry of Health has not regulated at the *normative* level the selection criteria of persons representing an emergency, being taken only general measures of a *recommendatory* nature, which may lead to dysfunctions within the health units regarding the protection of persons suspected of oncological conditions or who must continue these treatments.

KEYWORDS: health, human rights, COVID-19, hospital treatment

Legal framework regarding the protection of people with oncological diseases

In accordance with art. 19 of the Government Decision no. 252/2020 on establishing measures in the field of health during the establishment of the state of emergency on the territory of Romania, the providers of medical services in contractual relationship with the health insurance houses have the obligation to take all measures, during the establishment of the state of emergency on the Romanian territory, to ensure a correct evaluation, monitoring and treatment of all categories of persons regardless of diagnosis, and during treatment to be monitored from the perspective of COVID-19, in view of limiting the spread of the pandemic (Șchiopu 2020).

This is the only legal framework that allows people suspected of having oncological conditions to go to the doctor for the necessary investigations in order to detect oncological diseases. Also, on the website of the Ministry of Health, are published the recommendations of the National Society of Medical Oncology in Romania regarding the protection measures of cancer patients who must go to the doctor. Therefore, regarding the reduction of congestion in oncology services, it is recommended that patients who require only palliative care be referred to other medical units. If there is only one county oncology service, with the support of the county public health directorates, the hospitals or support departments in the territory will be identified where patients who need exclusive palliative care can be directed.

In the counties where there are several oncology services, depending on the local specifics and with the coordination of the county public health directorates, it will be established where the patients with exclusive palliative care will be hospitalized; units that already have beds or compartments or palliative care units or have the possibility to create a separate circuit for these patients will be selected for this service.

Regarding the priority hierarchy of oncological medical care, the French model was taken over and it was foreseen that the specific care will be granted considering the following prioritization: patients treated with curative intent; patients treated with curative intent, in the first therapeutic line; patients treated with palliative intent under the age of 70 years; other patients treated with palliative intent.

Regarding the avoidance of the virus and the shortening of time in waiting rooms (consultation), the recommendations say that all cancer patients in waiting rooms must wear masks, provided by health facilities; keep a minimum distance of 2 meters between patients; the patients are scheduled at intervals of 20-30 minutes (where possible) and the analysis of the medical tests should be done in stages, per hour, so that there are not several patients simultaneously in the waiting room or in the day hospital area; avoiding contact with medical staff when it is not absolutely necessary: asymptomatic patient, follow-up visit, prescription of hormone therapy, trastuzumab, etc.; all non-urgent consultations (for example, regular inspections) will be scheduled.

Regarding the shortening of the length of stay for hospitalized patients (continuous and day hospitalization), measures will be taken to replace prolonged treatment regimens (for example, day 1-3 or 1-5 regimens with shorter alternatives 1-2 days, when possible), administration of immunotherapy at 4 weeks or bisphosphonates at 3 months or weekly schemes with those at 21 days; the collection of samples and the transmission of the results should be made a priority and in the shortest possible time for oncological patients; at any time it is possible to perform blood tests or other medical tests at home. Also, it is recommended to reduce excessive bureaucratic procedures, associated with medical activity, which are time consuming and prevent operational hospitalization and discharge (simplification of observation sheets, medical letters, certificates, forms, etc.).

It is noted that the Ministry of Health does not communicate a specific legal framework applicable at national level, only general recommendations are taken that may lead to malfunctions in health facilities for the protection of persons suspected of cancer or who must continue these treatments, especially given the risk of wrong application of the Order of the ministry of health that establishes measures to contain the spread of infection with SARS-CoV-2, at the level of public and private health.

According to the Order of the Minister of Health no. 555/2020 on the approval of the Plan of measures for the preparation of hospitals in the context of the coronavirus epidemic COVID-19, of the List of hospitals providing medical care to patients tested positive for SARS-CoV-2 in phase I and phase II and the List with support hospitals for patients tested positive or suspected of having the SARS-CoV-2 virus, scheduled hospitalizations, such as scheduled surgeries for chronic patients in healthcare facilities with beds in university centers, were reduced the ambulatory medical activity by up to 50% and up to 50% compared to February 2020, except for chronic patients or pregnant women who require diagnostic or therapeutic interventions, the timing of which may reduce the chances of survival. In this regard, health facilities will take measures in accordance with the regulations in force to prevent the spread of COVID-19 infection (Ionas 2012, 109).

According to art. 4 of Order no. 555/2020, all health units in the public and private system have the obligation to ensure the provision of medical care to all patients. The refusal to ensure the provision of medical care according to the specific attributions is sanctioned according to the legal provisions.

By the Orders of the commander of the action no. 74527/2020 and 74553/2020, during the whole state of emergency the hospitalizations for surgeries, other treatments and medical investigations that did not represent an emergency and could be rescheduled, from all the sanitary public or private units with beds, were suspended, as well as consultations and treatments that could be rescheduled, in all outpatient structures, also both public and private. According to them, the prohibitions were not absolutely and automatically applicable, *but based on the analysis of the specialist doctor*.

The selection of urgencies based exclusively on the decision of the doctor

Considering the standardization of the types of treatment in oncological pathology whose timing can lead to a reserved prognosis, the decision to continue or interrupt the ongoing chemotherapy

and radiotherapy treatments is at the discretion of the attending physicians, who made the decision based on the risk of infection with the SARS-CoV-2 virus and the benefits to the patient of continuing oncological therapy. Given that the prohibitions were not applicable to patients with chronic oncological conditions, the specialist doctor was the one who decided the need to hospitalize patients or the need for consultations or outpatient treatments so that the evolution of the disease does not lead to aggravation. Therefore, the prior interest is the acquisition, maintenance or improvement of the health of patients with this pathology.

Indeed, by the entry into force of the amendments to the Order of the Minister of Health no. 623 of 14 April 2020, brought to the Order no. 555/2020, from the rule according to which “scheduled hospitalizations, such as scheduled surgeries for chronic patients beds with beds in university centers, and up to 50% compared to February (2020) outpatient activity”, an exception was inserted: “the chronic patients or pregnant women who require diagnostic or therapeutic interventions, the timing of which may reduce the chances of survival, are excluded”. In this regard, the health units will take measures in accordance with the regulations in force to prevent the spread of COVID-19 infection.

These provisions *have remained unchanged so far*, however, through the additions brought by the Order of the Minister of Health no. 961 of May 29, 2020, in the Order no. 555/2020 were inserted the provisions according to which local epidemiological, the hospitalizations and the scheduled surgical interventions can be resumed, as well as the activity in the outpatient clinics, not being necessary to respect the percentages mentioned in sub-point 1; depending on the local epidemiological evolution, hospitals that provide medical care to patients tested positive or suspected with the SARS-CoV-2 virus may provide, with the approval of the county health departments and the municipality of Bucharest, medical care also to non-COVID-19 patients, in conditions of completely separate functional circuits, without the need to discharge/transfer all hospitalized patients to other hospitals.

According to the Recommended Measures to reduce the impact of the COVID-19 pandemic on cancer patients and oncology services issued by the Romanian National Society of Medical Oncology, “cancer patients have a much higher risk (4 to 5 times) of developing very severe respiratory complications, including death, especially if they have undergone surgery or received chemotherapy in the previous weeks. It can be estimated that cancer patients are currently at vital risk due to both the underlying condition and the threat of COVID-19 infection (double hazard)”. Also, according to official information provided by the European Center for Disease Prevention and Control, some European Union countries (for example, Spain, Italy, France, UK) have developed regulations for the management of cancer patients during the pandemic.

Currently, in Romania, we appreciate that the treatment of cancer patients is difficult due to both the fact that some hospitals have remained closed and on alert (being either COVID-19 hospitals or COVID-19 support units, without the possibility of creating complete circuits) as well as the fact that the entire responsibility for the need to hospitalize patients or for outpatient consultations or treatments belongs entirely to the attending physician, who may have to assess the urgency or the necessity in advance regarding the diagnostic intervention, without regulations guidelines issued by the Ministry of Health (Şaramet 2020, 29). Also, the suspected patient of an oncological condition is not among the exceptions regulated by Order no. 555/2020, in order to carry out the necessary investigations (Adam and Adam 2016, 617).

Therefore, it is necessary to take urgent measures to facilitate the access of patients with oncological diseases, as well as those suspected, to diagnosis and treatment, by creating separate circuits in county emergency hospitals that are designated to be COVID-19 hospital or COVID-19 support unit and by developing protocols governing, on the one hand, the protection measures applicable to this category of patients and, on the other hand, diagnostic services with general accessibility, as well as treatment procedures and surgeries, by

establishing general criteria for the prioritization of cancer patients for surgery, respectively for specific treatment (radiotherapy, chemotherapy, etc.).

Recent measures for the protection of health of patients with oncological diseases

According to Order no.961/2020 amending and supplementing Order no. 555/2020, after the cessation of the state of emergency, depending on the local epidemiological evolution, the hospitalizations and scheduled surgeries were resumed, as well as the outpatient activity.

Hospitals that provide medical care to patients tested positive or suspected of having the SARS-CoV-2 virus can provide, with the approval of the county and Bucharest health directorates, medical care and non-COVID-19 patients under the existence of completely separate functional circuits, without the necessity to discharge or transfer all hospitalized patients to other hospitals. Considering the standardization of the types of treatment in oncological pathology whose timing may lead to a reserved prognosis on the evolution of the disease, specific provisions were issued for prioritizing these patients, as well as the introduction in the Recommendations regarding testing, issued by the National Institute of Public Health, the exemption of this category of chronic patients from the measures ordered regarding the limitation of hospitalizations, appointments and interventions provided in Annex no. 1 to Order no. 555/2020, with subsequent amendments and completions.

To support the needs of patients and ensure safe access to medical services for doctors and patients, by limiting travel and interaction with others, family physicians and outpatient clinics can provide long-distance consultations, which can be carried out by any means of communication, with a maximum of 8 consultations/hour. The family doctor may issue a medical prescription, for patients with chronic diseases with a stable therapeutic scheme, based on the medical documents that were issued to the patient - medical letter and/or confirmation of registration of the specific prescription form.

In conclusion, we appreciate that, in the situation given by the COVID-19 pandemic and its evolution, an attempt was made by the Ministry of Health to identify the optimal solutions, so that patients with oncological / chronic pathologies can have access to health services. However, we find that, despite the diligence of the Ministry of Health, some issues remain difficult, such as, for example, the fact that not all hospital units can create separate circuits to resume hospitalizations of both COVID-19 patients, as well as non-COVID-19 patients with oncological conditions (Hegheş 2020).

Also, indeed, according to the Recommendations of the National Society of Medical Oncology of Romania on the measures for the protection of cancer patients who must go to the doctor, several measures were specified, including those on reducing congestion in oncology services, as well as those of prioritization of oncological medical care, but there are no specific measures to facilitate the access of patients with suspected oncological diseases to diagnosis, as well as the fact that the entire responsibility for assessing the urgency or need for diagnostic intervention belongs to the attending physician (Adam 2017, 277).

In order to improve this last-mentioned aspect, an example of good practices we find in the Guide issued by the American College of Surgeons and entitled COVID-19: Elective Case Triage Guidelines for Surgical Care, a guide containing the criteria for sorting selected cases for surgical care, mainly those of an oncological nature.

Conclusions

At this time, the public authorities are facing a difficult situation of implementing epidemiological criteria with a primary and essential role in the crisis caused by the epidemic determined by the new coronavirus, as well as the ease of access of non-COVID patients to specific healthcare services. Thus, the current epidemiological situation is characterized by two main attributes: on

the one hand, the prudent attitude of health decision-makers that does not jeopardize previous efforts to control the spread of the new Coronavirus, and on the other hand, there is a need to ensure non-COVID health services.

Unfortunately, this is not a time to reduce the number of hospitals designated as COVID support hospitals, the steps being limited to the principles of compliance with public health rules.

Patients who require exclusively palliative care will be referred to other medical units, if there is only one county oncology service, with the support of local sanitary public authority and hospitals or support departments in the territory shall be identified where patients in need exclusive palliative care can be directed.

In the counties where there are several oncology services, depending on the local specifics and with the coordination of the local sanitary public authority, it will be established where the patients with exclusive palliative care are hospitalized.

However, there are still aspects that need to be improved, starting from the Recommendations of the National Society of Medical Oncology in Romania: identifying specific measures to facilitate access for patients with suspected oncological diseases to diagnosis, solving the problem of the doctor assuming full responsibility for assessment of the urgency or necessity of the diagnostic intervention in the absence of guiding prioritization criteria, the deficiency of the palliative care services.

References

- Adam, A.-R. 2017. *General Theory of Obligations*. Bucharest: C.H. Beck Publishing House.
- Adam, I. and Adam, A.-R. 2016. *Civil Code. The 5th Book. About obligations. Titles I-VIII. Comments and explanations*. Bucharest: C.H. Beck Publishing House.
- American College of Surgeons. 2020. COVID 19: Elective Case Triage. Guidelines for Surgical Care, https://www.facs.org/-/media/files/covid19/guidance_for_triage_of_nonemergent_surgical_procedures.ashx.
- European Centre for Disease Prevention and Control. 2020. "National Information resources on COVID-19." <https://www.ecdc.europa.eu/en/COVID-19/national-sources>.
- Hegheș, N.- E. 2020. "Some Considerations Regarding the Crime of Thwarting Disease Control." *Proceedings of the 17th International RAIS Conference on Social Sciences and Humanities* on June 1-2, 2020.
- Ionas, D.G. 2012. "Notions on searches." *Bulletin of the Transilvania University of Brasov*, vol. 5 (54) No. 1.
- Șaramet, O. 2020. "The right to protection to health or the right to health? – constitutional approaches." *Jus et Civitas*, Vol. VII (LXXI) Issue 1.
- Șchiopu, S.-D. 2020. "On the (Im)possibility of Retaining the Criminal Offence of Thwarting Disease Control in the Case of Persons Infected With SARS-CoV-2 Who Refused Hospitalization During the State of Emergency." *Law Review* no. 11: 132-149.