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<u>Najznačajnije novine koje donosi novi Zakon o zdravstvenoj zaštiti</u>	<u>Serbia: Most Important Novelties in New Law on Healthcare Protection</u>
Početkom aprila 2019. godine, Narodna skupština Republike Srbije usvojila je novi Zakon o zdravstvenoj zaštiti („ Zakon “) s ciljem unapređenja zdravstvene zaštite nizom novina, na taj način usaglašavajući zakonodavstvo Republike Srbije („ RS “) sa propisima i standardima Evropske unije u ovoj oblasti.	At the beginning of April 2019, the Serbian Parliament adopted a new Law on Healthcare Protection (“ Law ”), with the intention of improving the healthcare system by introducing novelties, aligning in that way the legislation of the Republic of Serbia (“ RS “) with EU regulations and standards in the area of healthcare.
<u>Neke od najznačajnijih novina uvedenih Zakonom:</u>	<u>Some of the most important novelties introduced by this Law are the following:</u>
<u>Racionalnija organizacija zdravstvenih ustanova.</u> Radi bolje organizacije i upravljanja zdravstvenim ustanovama u privatnoj svojini novim Zakonom je izričito propisano da se na organe zdravstvene ustanove u privatnoj svojini, statusne promene, promenu pravne forme i prestanak postojanja, shodno primenjuju propisi kojima se uređuje pravni položaj društva sa ograničenom odgovornošću. Prethodno važeći Zakon o zdravstvenoj zaštiti je u ovom pogledu bio nejasan, propisujući jedino da o ukidanju, spajanju i podeli zdravstvenih ustanova u privatnoj svojini odlučuje osnivač. Dodatno, po prvi put, zdravstvena ustanova može se osnovati i u skladu sa propisima kojima se uređuje javno-privatno partnerstvo.	<u>More Rational Organization of Healthcare Institutions (“HCIs”).</u> In order to achieve a better organization and management of privately owned HCIs, the Law prescribes that the regulations governing the legal status of a limited liability company accordingly apply to status changes, change of legal form and termination of existence of private HCIs. In that regard, previously applicable Law on Healthcare Protection was unclear, providing only that the founder decides upon termination, merger and division of privately owned HCIs. Additionally, HCIs can now be founded in accordance with the legislation governing public-private partnerships.
<u>Registar zdravstvenih ustanova.</u> Umesto dosadašnjeg upisa u registar suda koji nije javno dostupan, zdravstvena ustanova i njena organizaciona jedinica van sedišta ustanove, nakon dobijanja rešenja o ispunjenosti uslova za obavljanje zdravstvene delatnosti, upisuju se u Registar zdravstvenih ustanova („Novi Registar“) Agencije za privredne registre („APR“) i objavljuju na internet stranici APR-a. Novi Registar će početi sa radom najkasnije do 11. oktobra 2020. godine. Do tada primenjivaće se i dalje režim upisa kod privrednog suda u skladu sa starim Zakonom o zdravstvenoj zaštiti. Zakonom je propisano da Novi Registar sadrži detaljne podatke o svakoj zdravstvenoj ustanovi, uključujući između ostalog, naziv, oblik i vrstu zdravstvene ustanove, podatke o osnivačima, broj i datum donošenja rešenja Ministarstva zdravlja („Ministarstvo“) o ispunjenosti propisanih uslova za obavljanje zdravstvene delatnosti itd.	<u>Register of HCIs.</u> Instead of the previously applicable registration in the court register, which was not publicly available, upon obtaining a license for performing a healthcare activity, HCI and its organizational unit outside its seat are now registered in the Register of Healthcare Institutions (“New Register“) with the Serbian Business Registers Agency (“BRA“) and published on the website of the BRA. The New Register will start working at the latest from 11 October 2020. Until then, the registration of HCIs with commercial courts shall continue to apply, in accordance with the previous Law on Healthcare Protection. The Law further prescribes that the New Register of Healthcare Institutions will include detailed information on every HCI, together with, <i>inter alia</i>, the name, form and type of HCI, information on the founders, the number and date of the license issued by the Ministry of Health (“Ministry“) for the fulfillment of the prescribed conditions for performing healthcare activity, etc.
<u>Preciziranje uslova koji se odnose na zabranu reklamiranja.</u>	<u>Specifying Conditions Related to Prohibition of Advertising.</u>

Novim Zakonom je dozvoljeno oglašavanje: - zdravstvenih usluga, - stručno-medicinskih postupaka i metoda zdravstvene zaštite koje se obavljaju u zdravstvenoj ustanovi, odnosno privatnoj praksi, kao i - kontakt podataka zdravstvene ustanove, odnosno privatne prakse, a sve u cilju informisanja pacijenta. Ovakvo zakonsko rešenje liberalnije je u poređenju sa strogim pravilima oglašavanja usluga zdravstvene zaštite sadržanim u prethodno važećem Zakonu o zdravstvenoj zaštiti, kada je pacijentima bilo moguće saopštiti jedino ograničenu količinu informacija, uključujući ime i vrstu zdravstvene ustanove, njeno registrovano sedište i radno vreme.	It is now allowed to advertise: - healthcare services, - expert-medical procedures and methods of healthcare protection performed in an HCI, or, as the case may be, private practices, as well as - contact details of HCI or private practice, with the aim of providing patients with the necessary information. This is more liberal compared to the strict rules on advertising of healthcare services contained in the old Law on Healthcare Protection, which allowed only a limited amount of information to be provided to patients (such as the name and type of the HCI, its seat and working hours).
• <u>Mogućnost angažovanja zdravstvenog radnika iz druge zdravstvene ustanove.</u> U načelu, zdravstvena ustanova može obavljati samo zdravstvenu delatnost koja je utvrđena rešenjem Ministarstva o ispunjenosti propisanih uslova za obavljanje zdravstvene delatnosti. Međutim, Zakon pravi izuzetak od ovog opšteg ograničenja. Naime, radi unapređenja kvaliteta pružanja zdravstvene zaštite, zdravstvena ustanova u javnoj svojini kao i privatna praksa, izuzetno, mogu angažovati zdravstvenog radnika druge specijalnosti iz druge zdravstvene ustanove odnosno privatne prakse zaključivanjem ugovora o poslovno-tehničkoj saradnji sa drugom zdravstvenom ustanovom odnosno privatnom praksom, odnosno zaključivanjem ugovora o dopunskom radu sa zdravstvenim radnikom. Na isti način, zdravstvena ustanova i privatna praksa mogu angažovati i zdravstvenog radnika sa dozvolom za obavljanje metoda i postupaka komplementarne medicine, ukoliko je to potrebno za dijagnostiku, lečenje i rehabilitaciju pacijenta u okviru zdravstvene delatnosti za koju je zdravstvena ustanova osnovana.	• <u>Possibility of Engagement of Healthcare Practitioners from Other HCIs.</u> In principle, an HCI may only perform a healthcare activity determined by the license of the Ministry on fulfillment of the conditions for performing the healthcare activity. However, the Law makes an exception to this general limitation. For the purpose of improving the healthcare system, a public HCI, as well as a private practice, exceptionally, may hire healthcare practitioners of another specialty from other HCI or private practice, by entering into a cooperation agreement with the other HCI or private practice, or by entering into an agreement for additional work with the healthcare practitioner. In the same manner, the HCI and the private practice may also hire a healthcare practitioner with the permission to perform methods and procedures of traditional medicine, if necessary, for the diagnosis, treatment and rehabilitation of a patient within the healthcare activity for which the HCI was established.
• <u>Preciznije uređenje dopunskog rada zdravstvenih radnika.</u> Zakon omogućava zdravstvenim radnicima da sa svojim poslodavcem kod koga su zaposleni sa punim radnim vremenom zaključe ugovor o dopunskom radu radi obavljanja određenih poslova iz svoje struke. Sa drugim poslodavcem, van redovnog radnog vremena, radi obavljanja određenih poslova iz svoje struke, zdravstveni radnik može zaključiti najviše tri ugovora o dopunskom radu u ukupnom trajanju do jedne trećine punog radnog vremena.	• <u>Detailed Regulation of Supplementary Work of Healthcare Practitioners.</u> The Law allows healthcare practitioners to enter into an agreement for additional work with their employer with whom they had previously established a full-time employment, for performing activities within their professional competences. A healthcare practitioner may enter into a maximum of three agreements for additional work with other employers beyond regular working hours, for performing activities within its professional competences, for a maximum of one third of the full-time working hours.

Kao preduslov za obavljanje dopunskog rada zdravstvenog radnika neophodna je prethodna saglasnost direktora zdravstvene ustanove odnosno osnivača privatne prakse u kojoj je odnosni zdravstveni radnik zaposlen sa punim radnim vremenom. Saglasnost se daje na period od godinu dana.	As a precondition for the performance of additional work, a healthcare practitioner must obtain prior consent of the director of the HCI or a founder of the private practice, where the healthcare practitioner is employed with full-time working hours. This consent is provided for a one-year period.
• <u>Primena preporučenih anti-koruptivnih mera.</u> <u>Precizirano je da je davanje donacije zabranjeno ukoliko je ona namenjena organu koji vrši nadzor, inspeksijski nadzor, odlučuje o pravima, obavezama i interesu donatora ili na bilo koji način stupa u poslovni ili neki drugi odnos sa tim licima.</u> Primera radi, privrednom subjektu koji bi želeo da u određenom postupku javne nabavke zdravstvene ustanove učestvuje kao ponuđač, bilo bi zabranjeno davanje donacije licu, članu organa zdravstvene ustanove u čijoj je nadležnosti odlučivanje o dodeli ugovora o javnoj nabavci. Davanje donacija je dozvoljeno samo ukoliko je isključena mogućnost neprikladnog uticaja, odnosno ukoliko ne postoji pretpostavka ili mogućnost takvog uticaja. Zakon posebnim odredbama reguliše i sukob interesa, ustanovljavajući kao opšte pravilo zabranu da zdravstveni radnici traže ili prime bilo kakvu korist za sebe ili lice sa njima povezano, a koja može uticati na nepristrasnost ili profesionalno obavljanje dužnosti. U tom pogledu, najburnije reakcije javnosti izazvala je odredba Zakona koja predstavlja izuzetak od navedenog pravila, da se iskazivanje zahvalnosti u vidu poklona manje vrednosti, odnosno reklamnog materijala i uzoraka, koji nije izražen u novcu ili hartijama od vrednosti i čija: - pojedinačna vrednost ne prelazi 5% jedne prosečne mesečne plate bez poreza i doprinosa u RS, a - ukupna vrednost ne prelazi iznos jedne prosečne mesečne plate bez poreza i doprinosa u RS, ne smatra korupcijom odnosno sukobom interesa. Predmetna odredba kritikuje se s razlogom jer, za razliku od Zakona o agenciji za borbu protiv korupcije, koji propisuje isti prag kada su u pitanju prigodni pokloni koje funkcioner može primiti, međutim <u>uz preciziranje da se ukupna vrednost prigodnih poklona odnosi na jednu kalendarsku godinu, Zakon ne propisuje period na koji se odnosi propisana ukupna vrednost „poklona manje vrednosti“ što evidentno otvara put potencijalnim koruptivnim aktivnostima.</u>	• <u>Implementation of Recommended Anti-Corruption Measures.</u> <u>Giving a donation is prohibited, if intended for a body performing supervision or inspection, deciding on the rights, obligations and interests of a donor or in any manner entering into business or other relation with these persons.</u> For example, a commercial entity that wishes to participate in a certain HCI's public procurement procedure as a bidder, would be prohibited from giving a donation to a person, who is a member of an authority of the respective HCI competent for deciding on the award of a public procurement agreement. Donations are only allowed if the possibility of inappropriate influence is excluded, i.e. if there is no presumption or possibility of such influence. The Law also regulates conflicts of interest, establishing, as a general rule, that it is prohibited for healthcare practitioners seeking or receiving any benefit for themselves, or a person related to them, which may affect their impartiality or professional performance of their duties. In this regard, the most boisterous public reaction was caused by the provision of the Law providing for an exception to this rule: that expressing gratitude through gifts of smaller value, i.e. advertising material and samples, which is not expressed in money or securities and which: - individual value does not exceed 5% of one average monthly salary without taxes and contributions in RS, and - the total value does not exceed the amount of one average monthly salary without taxes and contributions in RS, shall not be considered as corruption or conflict of interest. This provision has been criticized since, unlike the anti-corruption legislation, which prescribes the same threshold when it comes to appropriate gifts that an official can receive, however, <u>specifying that the total value of appropriate gifts is related to one calendar year, the Law does not prescribe the period to which the prescribed total value of “gifts of smaller value” relates, which obviously opens the door for potential corruptive activities.</u>

Svakako, Ministarstvo je u svom obaveštenju povodom reakcija javnosti na tzv. „poklone manje vrednosti“ (link) navelo da iako je Zakon usvojen „Ministarstvo zdravlja ostaje otvoreno i spremno da se kroz podzakonska akta, na osnovu argumentovanih sugestija i predloga, u interesu građana Srbije ovaj propis dodatno unapredi i učini funkcionalnijim“. Dakle, čini se da je nedostatak navedene odredbe Zakona, usled mnogobrojnih kritika stručnjaka prepoznalo i samo Ministarstvo, te je razumno očekivati njenu izmenu u budućnosti.	Nevertheless, the Ministry in its announcement regarding public reactions to the so-called “gifts of smaller value” (link) stated that although the Law has been already adopted, “the Ministry of Health remains open and prepared for further improvement of this regulation and making it more functional through the by-laws, based on argumentative suggestions and proposals, in the interest of the citizens of Serbia”. Therefore, it appears that this gap in the Law was also recognized by the Ministry, due to numerous critics of experts. Accordingly, it seems reasonable to expect this provision of the Law to be changed in the future.
<u>Zaključak</u> Nesporno je da se potreba za donošenjem Zakona javila kao neophodna s obzirom na nastale promene u oblasti sistema zdravstva u periodu od usvajanja prethodnog zakona o zdravstvenoj zaštiti, pre više od jedne decenije, 2005. godine. Stoga, uprkos nekim evidentnim nedostacima predstavlja značajan korak u unapređenju i modernizaciji sistema zdravstvene zaštite RS.	<u>Key takeaway</u> It is indisputable that the need for adoption of the Law has arisen due to significant changes occurred in the health care system in the period from the adoption of the previous law on healthcare protection in 2005, more than a decade ago. Therefore, despite some obvious deficiencies, it certainly represents a significant step forward in the improvement and modernization of the health care system in the RS.
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