

TRANSLATION IN THE HEALTH SECTOR: CLAIMS AND BEARING COSTS

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BY

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Summary

Analysis of constitutional law and of international law that is binding in Switzerland shows that the state is obliged to organise access to health infrastructure without discrimination, and that nobody must be refused medically indicated treatment as a result of a lack of language skills. Therefore, the state must ensure that, before medical intervention, the patient is given an explanation in a language that he or she understands, and that consent to the intervention is based on the free will of patients who have been given explanations. Constitutional law and international law, in particular the Convention on Biomedicine, which recently became binding in Switzerland, obliges the state to ensure that in public hospitals there are no language barriers that would make it impossible for patients to have explanations and to give their consent to medical interventions. This obligation applies to foreign patients regardless of their place of residence and their legal status as foreigners.

In principle, cantonal legislation obliges public hospitals to accept patients and to treat them. Certain cantons have explicit statutes on the right to adequate treatment. The cantons also regulate in detail the rights of patients to complete, appropriate, comprehensible explanation and the obligation of the specialised health workers, before intervention, to obtain the patient's consent, based on sufficient information. Although cantonal legislation contains hardly any regulations in relation to the role of a translator, for foreign patients, there is a corresponding obligation as regards the requirement to give sufficient explanation. The more serious the coming intervention will be the more important it is to provide a high quality translation. If the intervention will have marked consequences, or in cases where there are several options for treatment, a highly qualified, if necessary intercultural translator participates if the person providing the treatment does not know the patient's language. Because of professional requirements and rules on medical confidentiality, hospital personnel without appropriate training and without regulated professional obligations should not be involved.

In cases where it is essential to use the services of an interpreter, the question arises of how this is to be financed. Based on the current legal situation it is not possible for the cost of interpretation to be covered by health insurance, and revision of the regulations is hardly possible in the short term, the costs now have to be met either by the public sector, e.g. by the hospitals or by the patients. If there are no legal regulations and no agreement, when hospital treatment is carried out the cost for necessary translation services has to be accepted. In cases where the patients do not have sufficient resources, the costs have to be subsidised by social security, and for people without the right to be resident in Switzerland, emergency assistance has to be provided.

In view of this unsatisfactory situation, other options have to be examined, such as providing sufficient translation infrastructure, either through co-financing by the public sector of communication jobs for intercultural interpreters or through explicit regulations on translations at the cantonal level, or by looking for other models for financing. There are also possibilities for specialist organisations to contribute to improving the situation.