

An invitation to dialogue



Law on Patients' Rights

www.patientrights.be



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This brochure is intended for healthcare practitioners and patients. It provides information on the current content of the Law and, in this way, promotes a durable partnership between both healthcare actors.

According to the Law, the patient not only has rights but also has the responsibility of cooperating with the healthcare practitioner as well as possible.

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Foreword

Since 2002 there has been a Law on Patients' Rights in Belgium. The law specifies the characteristics of the relationship between the patient and the healthcare practitioner and aims to improve healthcare quality.

This Law is heavily based on certain legal principles and existing ethical rules. The wording of the Law sums up patients' basic rights and explains the provisos for keeping patients' health records up to date and for access to such records. It also determines the possible person (persons) who can represent patients who are not capable to exercise their rights themselves (due to the status of legal incompetence or due to de facto incompetence).

A person who is of the opinion that a healthcare practitioner has not respected one of his/her rights as a patient and expresses his/her dissatisfaction or frustration in this respect can contact the ombudsman service of the hospital in question or the Federal Ombudsman Service for Patients' Rights if it concerns a healthcare practitioner outside a hospital.

The Federal Commission on Patients' Rights, which was established at the Federal Public Service Public Health, evaluates the application of the Law and advises the government on patients' rights (see www.patientrights.be).

I. Who does the law target? In which situations?

Patients

Any person provided with healthcare, whether or not this is done at that person's own request (e.g. at the request of an employer when verifying inability to work).

Healthcare practitioners

The following healthcare practitioners must respect patients' rights within the scope of their legal competencies: physicians, dentists, pharmacists, midwives, physiotherapists, nurses and paramedical practitioners (bandagists, orthotists, prosthetists, dieticians, occupational therapists, pharmaceutical technical assistants, medical imaging technologists, medical laboratory technologists, speech therapists, orthoptists, chiropodists, audiologists and hearing aid specialists).

Healthcare

The Law on Patients' Rights relates to all services provided by healthcare practitioners in order to promote, establish (e.g. insurance medicine), maintain, restore (e.g. revalidation) or to improve a patient's health condition, or to provide assistance to a dying patient (e.g. palliative care).

II. What rights do patients have?

1. Receiving quality service

All patients are provided with the best possible service commensurate with medical knowledge and available technology. The services are provided while duly respecting the human dignity and autonomy of the patient, without any distinction on the basis of social class, sexual orientation or philosophical conviction.

Care in order to prevent, treat and alleviate physical and psychological pain forms an integral part of the patient's treatment.

2. Being free to choose a healthcare practitioner

The patient chooses the healthcare practitioner and can approach another healthcare practitioner at any point in time.

However, free choice can in some cases be limited by the Law or by circumstances that are characteristic of the manner in which healthcare is organised (e.g. mandatory admission of a person with a mental illness and in cases where there is only one specialist present in a hospital).

On the other hand, any healthcare practitioner can refuse to provide a patient with services for personal or practitioner reasons, except in the case of an emergency. If the healthcare practitioner stops providing treatment, (s)he must nevertheless guarantee continuity of care.

3. Being informed on one's state of health

The healthcare practitioner provides the patient with all the information necessary to gain an understanding of his/her health condition (i.e. the diagnosis, even if it is negative) and its probable evolution. The healthcare practitioner also indicates recommended behaviour in this respect (e.g. if there are certain pregnancy-related risks).

How is the patient informed?

The healthcare practitioner orally communicates the information to the patient in clear language that is adjusted to the patient, with due consideration for the patient's age, education and ability to understand.

A patient can have a confidant assist him/her. (S)he can also request that the information be communicated to this confidant. Where appropriate, the healthcare practitioner makes a note in the health records of the identity of the confidant and of the fact that the information was communicated to this person or in his/her presence.

The confidant A family member, friend, other patient or any other person designated by the patient to assist him/her in obtaining information on his/her state of health, the perusal of his/her health records or obtaining a copy of his/her health records, and in lodging a complaint. The Federal Commission on Patients' Rights has drawn up a form for the designation of a confidant (see V. Annex 2).

If the patient does not wish to receive the information

The healthcare practitioner respects his/her wish (e.g. refusal to know whether or not one is the carrier of an incurable disease such as Huntington's disease) and makes a note of this in the health records.

However, the healthcare practitioner cannot comply with this "request by the patient not to be informed" if not informing the patient can have a serious adverse effect on the health of the patient or third parties (e.g. infectious disease). In such a case the healthcare practitioner must consult another healthcare practitioner in advance and, if a confidant has been designated, discuss the matter with him or her.

If the information can have a serious adverse effect on the patient's health

Exceptionally, the healthcare practitioner can withhold certain information from the patient if (s)he is of the opinion that such information can have a serious adverse effect on the patient's health. The healthcare practitioner must seek a colleague's advice for such an unusual and temporary course of action and enter the reason(s) for withholding this information in the health records. In addition, if there is a confidant, the sensitive information is communicated to him or her.

The healthcare practitioner must use the necessary sensitivity when telling the patient (s)he is withholding information.

4. Consenting freely to an intervention, with prior information

A healthcare practitioner must obtain the patient's free and informed consent for treatment before it is started.

This means that the healthcare practitioner must have clearly informed the patient of the characteristics of the intended intervention.

The information, which is provided at the appropriate time (e.g. before the patient is on the operating table), relates to the following aspects of the intervention: the purpose (e.g. diagnosis, or to operate), the nature (e.g. is the intervention painful?), the degree of urgency, duration, frequency, contra-indications, side-effects, relevant risks, necessary aftercare, financial consequences (e.g. fees, whether or not the healthcare practitioner is registered with the national health service system), possible consequences of a refusal to consent and the possible alternatives.

In an emergency, when it is impossible to obtain the consent of the patient or his/her representative (e.g. an unconscious person in the emergency department), the healthcare practitioner carries out all the necessary interventions and states these in the health records.

How does the patient give consent?

The patient gives consent orally or the healthcare practitioner deduces this from the patient's behaviour (e.g. the patient holds out his/her arm for an injection). The patient can give consent in certain conditions (e.g. stopping chemotherapy if there is no result).

The patient and healthcare practitioner can put the consent in writing by mutual agreement and add it to the health records (e.g. in the case of an important test or treatment).

If the patient refuses or withdraws his/her consent

The healthcare practitioner respects such a refusal as long as the patient has not withdrawn it. However, the healthcare practitioner continues to provide a quality service (e.g. continuing to provide basic physical care to the patient who refuses to eat and drink).

The patient or healthcare practitioner can request that the withdrawal or refusal to consent be stated in the health records.

If the patient is in a state of health that prevents him/her from expressing his/her will (e.g. in a coma or in the case of a degenerative mental disorder) the healthcare practitioner must respect the prior declaration of will that the patient drew up beforehand at a time when (s)he was still able to exercise his/her rights. The patient can have indicated in such a prior declaration that (s)he refuses to give consent for a particular intervention. This prior declaration of will is preferably drawn up in the presence of a third person (e.g. a healthcare practitioner) to avoid divergent interpretations. The declaration is not limited in time, unless the patient revokes it at a time when (s)he is capable of exercising his/her rights.

5. Availing of carefully updated health records, and having the possibility to peruse them and obtain a copy

The healthcare practitioner **duly keeps the health records up to date** for each patient, which (s)he (the healthcare practitioner) keeps **in a safe place**. These records contain the patient's identity details and medical information (e.g. examination/test results and diagnoses). The patient can request the healthcare practitioner to add certain documents to the records (e.g. a scientific article on the illness (s)he is suffering from and/or a document in which a confidant or representative is designated).

If the patient chooses to have another healthcare practitioner, (s)he can request that his/her health records be transferred in order to guarantee continuity of care.

How can the patient peruse his/her record?

The patient can request the healthcare practitioner (orally or in writing) to peruse in a direct manner his/her health records. The healthcare practitioner has 15 days as of the receipt of this request to submit to the patient the health records, with the exception of the healthcare practitioner's personal notes (notes which are concealed from third parties, which are destined for the healthcare practitioner's personal use and which are of no importance to the quality of the care) and data relating to third parties (e.g. identity details of next of kin who have entrusted information without the patient's knowledge).

The patient can designate a confidant in writing to assist him/her or to peruse his/her health records in his stead - including the personal notes if the confidant is a healthcare practitioner. The patient's request and the identity of the confidant are added to the health records.

If the healthcare practitioner has decided not to inform the patient of his/her state of health for fear that this could have serious adverse effects on his/her health (cf. II.3), then the patient only has indirect access to his/her health records. In such a case only a healthcare practitioner designated by the patient can peruse the health records, including the personal notes.

How can the patient obtain a copy of his/her records?

The patient can request to have a copy of his/her health records under the same conditions as for perusal and at a maximum price of EUR 0.10 per page of copied text. The patient can be charged a maximum amount of EUR 5.00 per copied image. If the copy is provided on a digital carrier, a maximum amount of EUR 10.00 can be charged for all pages copied. The costs for a copy of the patient's health records may not exceed EUR 25.00.

The copy is marked "strictly personal and confidential". This is merely an indication, a sign that the patient interprets as (s)he wishes.

The healthcare practitioner does not provide a copy if (s)he avails of elements indicating that the patient is under pressure to communicate the information in question to third parties (e.g. employer or insurance company).

How can the next of kin of a deceased patient gain access to the health records?

If the patient did not object to it during his/her lifetime, the spouse, partner, parents, children, brothers and sisters, grandparents and grandchildren who can invoke valid reasons (e.g. suspicion of a medical error or tracing family antecedents) can designate a healthcare practitioner (e.g. the family's general practitioner) who peruses the health records of the deceased, including personal notes.

To protect the patient's privacy, perusal is indirect and is restricted to the data that are directly related to the reasons which the next of kin invoke.

6. Being assured that one's privacy is protected

Subject to the patient's consent, personal data are furnished only in the presence of those persons whose presence is professionally required.

Information relating to the patient's health may not be communicated to third persons (e.g. for the purposes of taking out life insurance policy), except in the case of a legal derogation and if this is essential to protect public health or the rights and freedoms of others (e.g. risk of infection).

7. Filing a complaint with an ombudsman service

If anyone is of the opinion that their rights as a patient have not been respected, they can file a complaint with the competent ombudsman service.

More information is provided on this subject below (cf. III).

III. How do the ombudsman services work?

1. What role do Patients' Rights Ombudsman Services play?

The ombudsman's task is, firstly, to encourage communication between the patient and the healthcare practitioner to prevent complaints.

If a patient lodges a complaint with a competent ombudsman service because (s)he is of the opinion that one of his/her rights was not respected (e.g. lack of information on his/her state of health, difficulty to access to the health records or inadequate care quality), the mediation is an attempt to solve the disagreement with the cooperation of the patient and the healthcare practitioner.

If the parties do not come to a solution, the ombudsman informs the complainant of other possibilities to deal with his/her request.

In addition to distributing information relating to its own organisation, the ombudsman service also formulates recommendations in the framework of its annual report to avoid certain dissatisfactions related to patients' rights being re-occurring. This report, in particular, is submitted to the Federal Commission on Patients' Rights.

2. How does mediation work?

Complaints can be formulated to the competent ombudsman in writing (by letter, fax or e-mail) or orally (by telephone, or in person by appointment). Where appropriate, the patient can be assisted by a confidant.

The ombudsman invites the patient to contact the healthcare practitioner personally before starting up a mediation procedure.

The ombudsman works independently, irrespective whether or not (s)he is an employee of the healthcare facility or a concertation platform. (S)he can therefore not be sanctioned for acts that (s)he has undertaken for the purposes of doing his/her job correctly.

When the complaint is lodged, the ombudsman listens to the patient and attempts to gain a general view of the situation. When the complainant's expectations are clear, the ombudsman contacts the healthcare practitioner concerned orally or in writing, who will be asked for his/her opinion on the facts which the patient has stated.

Without choosing the part of either the healthcare practitioner or the patient, the ombudsman strictly respects neutrality and impartiality during the entire course of the procedure. Moreover, (s)he may have been involved in the incidents or with the persons to whom the complaint refers.

For the purposes of restoring dialogue, the ombudsman can propose to the parties who agree with the mediation, to contact one another once again or to meet in

his/her presence. If they refuse, the ombudsman takes on the role of an intermediary for the duration of the procedure. He respectively keeps each party up to date (orally or in writing) about the other party's reactions and expectations.

The ombudsman encourages the parties to express their feelings and proposals within the scope of the mediation. (S)he attempts to moderate the conflict and solve the disagreement by means of negotiation, exchange of information and communication. To reach a solution, the ombudsman exercises his/her function as mediator conscientiously and within a reasonable timeframe. However, managing the conflict depends largely on the willingness of the parties involved, who can terminate the mediation process at any time and turn to a different procedure.

If the parties come to an agreement and/or if communication is restored, the mediation file can be closed.

If no solution is reached, the ombudsman points out to the patient other possibilities to deal with the conflict (e.g. another service at the hospital, the health insurance funds, the Provincial Medical Commissions, the Community and Regional Inspection Services, the Belgian Medical Association and the Courts).

All steps taken by the ombudsman are free of charge.

Considering that the ombudsman is obliged to respect professional confidentiality, (s)he may not disclose to third persons any information which the patient or the healthcare practitioner has entrusted him/her.

The internal regulations that determine the particular provisos regarding the organisation, the functioning and the complaints procedure are available in the hospital or at the administrative headquarters of the mental health concertation platform. The regulations of the Federal Ombudsman Service are available at the secretariat of the Federal Commission on Patients' Rights. Any person who has an interest in this respect can peruse the internal regulations.

3. Who can the patient contact to lodge a complaint?

- If the complaint concerns a healthcare practitioner who works **in a hospital**, the patient contacts the hospital's ombudsman service.

If the healthcare practitioner in question works in a psychiatric hospital, in a sheltered accommodation or in a psychiatric rest home, it is possible that these facilities will call upon the ombudsman at the mental health care concertation platform of which they are a member.

The **contact information of the ombudsman** is available **at the Federal Ombudsman Service for Patients' Rights** and on the **FPS Health web site** (see below). The patient can also inquire directly **at the hospital concerned**.

Conversely, if the complaint involves a healthcare practitioner in the ambulatory sector who **works outside a hospital**, (e.g. a general practitioner, a specialist in a private practice, a self-employed nurse, a dentist, a physician in a rest home or a

prison doctor), the patient must address to the Federal Ombudsman Service for Patients' Rights.

Contacts

- **Ombudsmen Services in hospitals or at the mental health care concertation platforms**

The list of ombudsmen is available at the following internet address:
www.patientrights.be.

- **Federal Ombudsman Service**

FPS Health, Food Chain, Safety and Environment
Directorate-General for Healthcare Facilities Organisation
Federal Ombudsman Service for Patients' Rights
Victor Hortaplein 40, box 10
1060 Brussels
www.patientrights.be

Dutch-speaking Federal Ombudsman
Tel.: 02/524.85.20, Fax. 02/524.85.38

French-speaking Federal Ombudsman
Tel.: 02/524.85.21, fax: 02/524.85.38

IV. What happens if the patient is not capable to exercise his/her rights?

1. Who is not capable to exercise his/her rights?

- a minor who, in the healthcare practitioner's opinion, is not capable of reasonably assessing his/her best interests;
- an adult who falls under the status of extended minority (seriously mentally challenged and with delayed development in accordance with the definition provided in the Civil Code);
- the adult who has been declared incompetent (constant state of feeble-mindedness or insanity in accordance with the definition provided in the Civil Code);
- an adult who, according to the healthcare practitioner, is de facto not capable to express his/her will (e.g. a person who is in a coma).

2. Who can exercise the rights of the patient who is not capable to do so?

If the patient is a minor, falls under the status of extended minority or has been declared incompetent

The parents (father, mother) or the guardians are entitled to exercise these rights.

However, the minor can fully or partly exercise his/her rights independently, if the healthcare practitioner is of the opinion that (s)he is able to assess his/her best interests in a reasonable manner.

Conversely, there is no such possibility for persons falling under the status of extended minority or a declaration of incompetence.

<p>The representative If the patient is not capable to exercise his/her patients' rights, the representative is the person who exercises the patients' rights on the latter's behalf. This distinguishes the representative from the confidant, who only assists him/her.</p>
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If the adult patient is de facto not capable to exercise his/her rights

By means of an authorisation that is written, dated and signed beforehand, the patient can designate a person whom (s)he trusts, who will act in his/her stead if and as long as the patient is not capable to personally exercise his/her rights. The patient ensures that the healthcare practitioner is informed about the mandate (e.g. to have the mandate added to the health records).

If the patient has not designated a representative, the former's rights are exercised by the following persons in order of substitution: co-habiting spouse or partner, adult child, parent, adult sister or brother.

If there is a conflict between several possible representatives (e.g. several children) or if there is no representative, the healthcare practitioner, in deliberation with the multi-disciplinary team, looks after the patient's best interests.

The representative designated by the patient This is the person whom the adult patient designated as representative in a written mandate when the patient was still capable to exercise his/her rights. The Federal Commission on Patients' Rights has drawn up a form to designate the representative and to withdraw the designation of the appointed representative (see V. Annex 2).

3. What are the limits to the representative's competence?

- The patient is involved in exercising his/her rights as much as possible and in proportion to his/her capacity to understand (e.g. in his/her lucid moments).
- The healthcare practitioner can refuse the representative access to the health records to protect the patient's privacy. In such a case only a healthcare practitioner designated by the representative can then peruse the health records or obtain a copy of them. The healthcare practitioner states the reasons why (s)he refused the representative access to the health records.
- The healthcare practitioner can also derogate from the representative's decision within the scope of multi-disciplinary deliberation. This can be done in the best interests of the patient and to avert a threat to the latter's life or to his/her health being seriously affected (e.g. the representative refuses vital treatment). However, the healthcare practitioner cannot derogate from the decision of the representative designated by a patient if the representative provides the proof that his/her decision corresponds with the patient's express will (e.g. testimony that confirms such a will or a video recording).
The healthcare practitioner states the motivation for not having followed the representative's decision in the health records.
- The representative can never go against a prior statement of will that the patient drew up at the moment that (s)he was capable to exercise his/her rights (prior refusal of a certain intervention).
- If, in the case of an emergency, the will of the patient and that of the representative are unclear, the healthcare practitioner acts as far as possible in the best interests of the patient's health.

V. Annexes

Annex 1. The Law of 22 August 2002 on the Rights of Patients, *Belgian Official Gazette*, 26 September 2002 (unofficial translation and consolidation¹)

CHAPTER I – General provision

[Article 1](#). This Law regulates a matter as referred to in Article 78 of the Constitution.

CHAPTER II – Definitions and scope

[Art. 2](#). The following definitions apply for the purposes of this Law:

1° patient: the natural person to whom health care is provided, whether or not this is at such person's own request;
2° healthcare: services provided by a healthcare practitioner in order to promote, establish, maintain, restore or improve patient's health condition or to provide support to a dying patient;

3° healthcare practitioner: the healthcare practitioner referred to in Royal Decree no. 78 of 10 November 1967 on the practice of the health professions, and the practitioner of the non-conventional practice referred to in the Law of 29 April 1999 on non-conventional practice in the medical, pharmacy, physiotherapy, nursing and paramedical professions.

[Art. 3](#). § 1. This Law applies to (contractual and extra-contractual) private- and public-law legal relationships relating to healthcare that a healthcare practitioner provides to a patient. <inserted in W 2006-12-13, Art. 61>

§ 2. By means of a Decree established after deliberation in the Council of Ministers and after recommendation by the Commission referred to in Article 16, the King can lay down more detailed rules regarding the application of the Law to the legal relationships referred to in § 1, which are to be specified by Him in order to take into account the need for particular protection.

[Art. 4](#). To the extent that the patient cooperates in this matter, the healthcare practitioner complies with the provisions of the Law within the limits of the authority that (s)he has been allocated by or in accordance with the Law. If appropriate, (s)he holds a multi-disciplinary deliberation in the best interests of the patient.

CHAPTER III - The patient's rights.

[Art. 5](#). As regards the healthcare practitioner, the patient is entitled to quality service provision which meets his/her needs, with due respect for his/her human dignity, self-determination and without any distinction on any grounds whatsoever.

[Art. 6](#). The patient has the right to choose freely the healthcare practitioner and the right to change that choice, both cases of which are subject to limits imposed by the Law.

[Art. 7](#). § 1. The patient has a right in respect of the healthcare practitioner to all relevant information required to gain insight into his/her health condition and the probable evolution of that condition.

§ 2. Communication with the patient shall use clear language.

The patient can request that the information be confirmed to him/her in writing.

The patient has the right to have a confidant assist him/her or has the right to the information referred to in § 1 exercised through such person. Where appropriate, the healthcare practitioner makes a note in the health records of the fact that, with the patient's consent, information was communicated to the confidant or to the patient in the presence of the confidant, and (s)he also makes a note of the latter's identity. Moreover, the patient can explicitly request that the above-mentioned be included in the health records.) <inserted in W 2006-12-13, art. 62>

§ 3. The patient is not provided with this information if (s)he explicitly requests it, unless not communicating it clearly produces a serious adverse effect on the health of the patient or a third person and on condition that the healthcare practitioner has consulted another healthcare practitioner beforehand and, if necessary, has discussed this with the appointed confidant referred to in § 2, third paragraph.

The patient's request is noted in or added to the health records.

§ 4. The healthcare practitioner may exceptionally withhold the information referred to in § 1 from the patient to the extent that communicating it would clearly bring about a serious adverse effect on the patient's health and on condition that the healthcare practitioner has consulted another healthcare practitioner about this.

¹ Unofficial consolidation of the Law of 13 December 2006 concerning various health provisions, *Belgian Official Gazette*, 22 December 2006, Arts. 48 and 61 to 64.

In such a case the healthcare practitioner adds a written motivation to the health records and, if necessary, informs the appointed confidant referred to in § 2, third paragraph.

As soon as communicating the information no longer presents the adverse effect referred to in the first paragraph, the healthcare practitioner must communicate the information.

Art. 8. § 1. The patient has the right to give his/her informed, prior and voluntary consent for any intervention by the healthcare practitioner.

Such consent is given explicitly except when the healthcare practitioner can, after (s)he has adequately informed the patient, reasonably deduce the patient's consent from his/her behaviour.

At the request of the patient or the healthcare practitioner and with the consent of the healthcare practitioner or of the patient, the consent is put down in writing and added to the health records.

§ 2. The information provided to the patient with a view to the patient providing his/her consent as referred to in § 1 relates to the purpose, degree of urgency, duration, frequency, relevant contra-indications for the patient, side effects, risks related to the intervention, after-care, possible alternatives and the financial consequences. In addition, the information relates to the possible consequences in the event of refusal or withdrawal of the consent and other explanations regarded as relevant by the patient or healthcare practitioner, if necessary including the legal provisions that must be complied with for an intervention.

§ 3. The information referred to in § 1 is furnished beforehand, in good time, on the conditions and in accordance with the stipulations provided for in §§ 2 and 3 of Article 7.

§ 4. The patient has the right to refuse or withdraw the consent for an intervention as referred to in § 1.

At the request of the patient or the healthcare practitioner, the refusal or withdrawal of the consent is put in writing and added to the health records.

The refusal or withdrawal of the consent does not have the consequence that the right to quality services provision on the part of the healthcare practitioner as referred to in Article 5 ceases to exist.

If the patient indicated in writing that (s)he refused a clearly outlined intervention by the healthcare practitioner when the patient was still capable to exercise the rights as laid down in this Law, such refusal must be respected as long as the patient does not withdraw it at a time that (s)he is capable to personally exercise his/her rights.

§ 5. When, in a case of emergency, there is no clarity as to whether or not there was a declaration of will on the part of the patient or his/her representative as referred to in Chapter IV, the healthcare practitioner performs any essential intervention immediately in the best interests of the patient's health. The healthcare practitioner makes a note of this in the health records referred to in Article 9 and acts as soon as this is possible in accordance with the provisions of the previous paragraphs.

Art. 9. § 1. In respect of the healthcare practitioner, the patient is entitled to carefully updated and safely kept health records.

At the patient's request, the healthcare practitioner adds documents that the patient has given him/her to the health records pertaining to the patient.

§ 2. The patient is entitled to perusal of the health records pertaining to him/her.

The patient's request for perusal of the health records pertaining to him/her is acceded without delay and, at the latest, within 15 days after such request has been received.

The healthcare practitioner's personal notes and data relating to third persons are excluded from the right of perusal.

At the patient's request, (s)he can be assisted by a confidant or exercise his/her right of perusal through such advisor whom (s)he has designated. If the confidant is a healthcare practitioner, (s)he also has a right to peruse the personal notes referred to in the third paragraph. (In such a case the patient's request is formulated in writing, and the request and the identity of the confidant are noted in or added to the health records.) <inserted in W 2006-12-13, Art. 63, 1°>

If the health records contain a written motivation as referred to in Article 7, § 4, second paragraph, which still applies, the patient exercises his/her right of perusal through a health practitioner (s)he has designated, who also has a right of perusal with regard to the personal notes referred to in the third paragraph.

§ 3. The patient is entitled to a copy of the full or part of the health records pertaining to him/her in accordance with the rules laid down in § 2. Every copy states that it is strictly personal and confidential. (The King can determine the maximum amount that the patient may be charged per page copied on paper or other carriers provided in application of the above-mentioned right to a copy.) <inserted in W 2006-12-13, Art. 63, 2°>

The healthcare practitioner refuses this copy if (s)he avails of clear indications that the patient is under pressure to provide third persons of a copy of his/her health records.

§ 4. After the patient is deceased, the patient's spouse, legally co-habiting partner, partner and blood relations up to and including the second degree have the right to peruse referred to in § 2 by way of and through the healthcare practitioner designated by the person making the (perusal) request to the extent that such persons' request is adequately justified and specified and that the patient did not explicitly object to this. The designated healthcare practitioner also has a right to peruse personal notes as referred to in § 2, third paragraph.

[Art. 10.](#) § 1. The patient is entitled to protection of his/her privacy in any intervention by the healthcare practitioner and, in particular, regarding the information relating to his/her health.

The patient is entitled to respect for his/her intimacy. Subject to the patient's permission, only the persons whose presence is justified within the scope of the healthcare practitioner's service provision can be present during the care, examinations and treatment.

§ 2. Interference is allowed with regard to the exercise of this right only insofar as it is provided for by the Law and insofar as it is essential to protect public health or the rights and liberties of others.

[Art. 11.](#) § 1. The patient has the right to lodge a complaint with the authorised ombudsman as regards the exercise of his/her rights granted to him/her by this Law.

§ 2. The ombudsman has the following tasks:

1° to prevent questions and complaints by encouraging communication between the patient and the healthcare practitioner;

2° to mediate in the complaints referred to in § 1 in order to reach a solution;

3° to inform the patient of the possibilities to settle his/her complaint if no solution as referred to in 2° is reached;

4° to provide information on the organisation, functioning and procedural rules of the ombudsman;

5° to formulate recommendations to prevent the reoccurrence of shortcomings that can lead to a complaint as referred to in § 1.

§ 3. In a Decree established after deliberation in the Council of Ministers, the King regulates the conditions which the ombudsman service has to meet in terms of independence, professional confidentiality, expertise, legal protection, organisation, functioning, financing, procedural regulations and area of application.

[Art. 11bis.](#) <inserted in W 2004-11-24/42, Art. 2; Coming into force: 27-10-2005> Everyone should receive the most appropriate care from the healthcare practitioners in the care sector to prevent pain, pay attention to it, assess it, take it into consideration, treat and alleviate it.

CHAPTER IV - The patient's representation

[Art. 12.](#) § 1. In the case of a patient who is a minor, the rights laid down in this Law are exercised by the parents who exercise authority over the minor or by the minor's guardian.

§ 2. The patient is involved in the exercise of his/her rights with due regard for his/her age and maturity. The rights summarised in this Law can be independently exercised by the patient who is a minor if (s)he can be considered as being able to reasonably assess his/her best interests.

[Art. 13.](#) § 1. In the case of an adult who falls under the status of extended minority or who was declared incompetent, the rights as laid down in this Law are exercised by his/her parents or guardian.

§ 2. The patient is involved in exercising his/her rights as much as possible and in proportion to his/her capacity to understand.

[Art. 14.](#) § 1. In the case of an adult patient who does not fall under one of the statuses referred to in Article 13, the rights as laid down in this Law are exercised by a person who was designated by the patient beforehand to act in his/her stead, if and as long as the patient is not capable to personally exercise these rights.

The designation of the person referred to in the first paragraph, designated hereafter as "the representative designated by the patient", is effected by means of a specific written mandate which is dated and signed by the patient and by this person, from which it appears that the latter consents. This mandate can be withdrawn by the patient or by the representative designated by him/her by means of a dated and signed document.

§ 2. If the patient has not designated a representative or if the representative designated by the patient does not act, then the rights as laid down in this Law are exercised by the co-habiting spouse, legal co-habiting partner or de facto co-habiting partner.

If this person does not wish to do this or there is no such person, the rights are exercised in descending order by an adult child, a parent, or an adult brother or sister of the patient.

If such a person also does not wish to do this or there is no such person, the healthcare practitioner in question looks after the patient's best interests and, when the occasion arises, holds multi-disciplinary deliberation.

This is also the case where there is a conflict between two or more of the persons mentioned in this paragraph.

§ 3. The patient is involved in exercising his/her rights as much as possible and in proportion to his/her capacity to understand.

(§ 4. In derogation from §§ 1 and 2, the right to lodge a complaint as referred to in Article 11 can be exercised by the persons referred to in the above-mentioned paragraphs, who are designated by the King by way of a Decree after deliberation in the Council of Ministers, without having to respect the order laid down in it.

The King can, by means of a Decree established after deliberation in the Council of Ministers, lay down more detailed rules regarding the application of this paragraph) <inserted in W 2006-12-13, Art. 64>.

[Art. 15.](#) § 1. With a view to protecting the patient's privacy as referred to in Article 10, the healthcare practitioner involved can fully or partially refuse the request for perusal or a copy as referred to in Article 9, § 2 or 3 by the person referred to in Articles 12, 13 and 14. In such a case the right to perusal or to a copy is exercised by a healthcare practitioner designated by the representative.

§ 2. In the best interests of the patient and to avert a threat to the patient's life or his/her health being seriously affected, the healthcare practitioner and, when the occasion arises, the multidisciplinary deliberation, derogates from the decision made by the person referred to in Articles 12, 13 and 14, § 2. If the decision was made by a person referred to in Article 14, § 1, the healthcare practitioner only derogates from this to the extent that such person cannot invoke the express will of the patient.

§ 3. In the cases of §§ 1 and 2, the healthcare practitioner adds a written motivation to the health records.

[CHAPTER V](#) – Federal Commission on Patient's Rights

[Art. 16.](#) § 1. The Federal Commission on Patients' Rights was established at the Ministry for Social Affairs, Public Health, and the Environment.

§ 2. The Commission has the following tasks:

1° to gather and process national and international information relating to matters regarding patients' rights;

2° on request or at its own initiative, to provide the Minister of Public Health with advice on the rights and obligations of patients and practitioners;

3° to evaluate the application of the rights provided for in this Law;

4° to evaluate the functioning of the ombudsman services;

5° to deal with complaints regarding the functioning of an ombudsman service;

§ 3. An ombudsman service has been set up at the Commission. This service is competent to refer a complaint by a patient relating to the exercise of his/her rights granted by this Law to the relevant competent ombudsman service or, if there is no such service, to deal with it itself, as laid down in Article 11, § 2, 2° and 3°.

§ 4. The King specifies more detailed rules regarding the composition and functioning of the Federal Commission on Patients' Rights. As regards the composition, a balanced proportion is guaranteed between the representatives of the patients, of the practitioners, hospitals and insurance institutions as referred to in Article 2, i, of the Coordinated Law of 14 July on mandatory insurance for medical treatment and payments. Civil servants working in Ministry Departments of Government Services can also be provided as members with an advisory vote.

§ 5. The Secretarial Office of the Commission is held by the official-general designated by the Minister responsible for Public Health.

[CHAPTER VI](#) – Amending and concluding provisions

[Art. 17.](#) The following amendments were made to the Law on Hospitals, which was coordinated on 7 August 1987:

1° In Title 1, Chapter V (new) was inserted, which reads as follows:

" CHAPTER V. – Observing patients' rights";

2° Article 17novies was inserted, which reads as follows:

Art. 17novies Within its legal possibilities, each hospital observes the provisions of the Law of 22 August 2002 on Patients' Rights regarding medical, nursing and other professional healthcare aspects in its legal relationship with the patient. Moreover, each hospital ensures that the healthcare practitioners who do not work there on the basis of an employment contract or holding tenure also respect patients' rights.

Each hospital ensures that all complaints regarding compliance with the previous paragraph can be lodged with the ombudsman service referred to in Article 70 quater in order to be dealt with by such service.

(The patient has the right to receive information from the hospital on the nature of the legal relationships between the hospital and the healthcare practitioners working there. The content of the intended information and the manner in which it must be communicated are determined by the King pursuant to recommendations by the Commission referred to in Article 16 of the Law of 22 August 2002 on Patients' Rights) <inserted in W 2006-12-13, Art. 48, 1°>.

(The hospital is liable for the failures of the healthcare practitioners working there relating to due regard for the patients' rights laid down in the above-mentioned Law of 22 August 2002, unless, within the scope of providing information referred to in the third paragraph, the hospital clearly communicated to the patient prior to the intervention by the healthcare practitioner that it (the hospital) was not liable for the failures, having regard to the nature of the legal relationships referred to in the third paragraph. Such communication does not prejudice any other legal provisions regarding liability for other people's actions.) <inserted in W 2006-12-13, Art. 48, 2°>.

3° Article 17 quater is inserted, which reads as follows:

" Art. 70 quater. In order to be accredited, each hospital must have an ombudsman service as referred to in Article 11, § 1 of the Law of 22 August 2002 on Patients' Rights, on the understanding that the King can specify the conditions in which the ombudsman service in question may be held by way of a cooperation agreement between hospitals.

Art. 18. § 1. The first paragraph of Article 10, § 2 of the Law of 8 December 1992 on the protection of privacy in relation to the processing of personal data, as amended by the Law of 11 December 1998, is amended as follows:

" Without prejudice to the provisions of Article 9, § 2, of the Law of 22 August 2002 on Patients' Rights, every person has the right, either directly or with the assistance of a healthcare practitioner, to obtain information on the personal data processed regarding his/her health. "

§ 2. The second paragraph of Article 10, § 2 of the same law is amended as follows:

" Without prejudice to the provisions of Article 9, § 2 of the above-mentioned Law, at the request of the person responsible for processing the data or at the request of the person concerned, the communication can be made through the intervention of a healthcare practitioner designated by the person concerned. "

Art. 19. Article 95 of the Law of 25 June 1992 on land insurance contracts is replaced by the following provision:

" Art. 95. - Medical information – The physician chosen by the insured can provide the insured who makes such a request with the medical statements required before the agreement is concluded or executed. These statements are limited to a description of the current state of health.

These statements may only be provided exclusively to the insurer's consultant doctor. The latter may not provide the insurer with any information that is not pertinent, while having regard for the risk for which the statements were drawn up or concerning persons other than the insured.

The medical examination, which is essential for concluding and executing the agreement, can only be based on the history prior to the current state of health of the candidate insured and not on techniques of genetic examination that serve to determine the future state of health.

The insured's doctor gives a statement on the cause of death to the insurer's consultant doctor on condition that the insurer shows that it is in possession of the insured's prior consent.

When there are no more risks for the insurer and if they so request, the consultant doctor once again provides the medical statements to the insured or, in the case of death, to his beneficiaries.

Announcing this law, ordering that the Country's seal shall be affixed to it and that it shall be published in the Official Belgian Gazette.

Issued at Châteauneuf-de-Grasse, 22 August 2002.

ALBERT

On behalf of the King:

The Minister of Consumer Affairs, Public Health and Environment,

Mrs M. AELVOET

Sealed with the Country's seal:

The Minister of Justice,

M. VERWILGHEN.

**Annex 2. Forms to designate the confidant,
to designate the representative and to withdraw the designation of the
representative, which were drawn up by the Federal Commission
on Patients' Rights (www.patientrights.be).**

**These forms serve purely as examples.
You can use them or opt for a different formulation.**



Federal Commission on Patients' Rights – 23 June 2006
Directorate-General for Healthcare Facilities Organisation
FPS Health, Food Chain, Safety and Environment

**Designating a CONFIDANT
Law of 22 August 2002 on Patients' Rights (Art. 7 § 2, Art. 9 § 2 and Art. 9 § 3)**

I, (patient's first name and surname), hereby designate the following person as my confidant who can also exercise the following rights without me being present:

<p>o Obtain information on my state of health and its probable evolution Period: (e.g. until a certain date or for an indefinite term) Name of the healthcare practitioner in respect of whom the right applies (e.g. general practitioner):</p>
<p>o Peruse my health records Period: (e.g. until a certain date or for an indefinite term) Name of the healthcare practitioner in respect of whom the right applies (e.g. general practitioner):</p>
<p>o Request a copy of my health records Period: (e.g. until a certain date or for an indefinite term) Name of the healthcare practitioner in respect of whom the right applies (e.g. general practitioner):</p>

- Patient's identity details:
 - address:
 - telephone number:
 - date of birth:

- Confidant's identity details:
 - First name and surname:
 - Address:
 - telephone number:
 - date of birth:

Drawn up in , on (date) – Patient's signature:

Recommendation: It is recommended that this form be drawn up in triplicate. One original can be kept by the patient, one by the confidant and one by the healthcare practitioner from whom the confidant receives information without the patient being present, has the right to peruse the health records or can make a copy of the health records.

Information: The patient can inform the healthcare practitioner at any time that the confidant may no longer act as indicated above.



**Designating a REPRESENTATIVE
for the purposes of representing the patient
Law of 22 August 2002 on Patients' Rights (Art. 14, § 1)**

- I, the undersigned, (patient's first name and surname), hereby designate the following person as my representative if I am personally not capable to make decisions on the health care to be provided to me and cannot exercise my rights as a patient myself.

- Patient's identity details:
 - address:
 - telephone number:
 - date of birth:

- Representative's identity details:
 - First name and surname:
 - address:
 - telephone number:
 - date of birth:

Drawn up in, on (date) - Patient's signature:

- I accept the designation as representative and I shall represent the patient to the best of my abilities if (s)he is not personally capable to do so.

Drawn up in, on (date) - Representative's signature:

Recommendation: 1. It is recommended that this form be drawn up in duplicate. One original can be kept by the representative, one original can be kept by the patient and a copy can be handed to the general practitioner or another doctor chosen by the patient: (to be completed by the patient).

2. The designation of a representative can always be withdrawn by a written, dated and signed statement. If this occurs, it is advisable that all persons who were informed of the original designation be notified accordingly.



**Withdrawal of the designated REPRESENTATIVE
for the purposes of representing the patient
Law of 22 August 2002 on Patients' Rights (Art. 14, § 1)**

I, the undersigned, (patient's first name and surname), hereby withdraw the designation on / / of the person stated below as representative

- Personal details of the representative whose designation is withdrawn:
 - First name and surname:
 - address:
 - telephone number:
 - date of birth:

Drawn up in, on (date) - Patient's signature:

Recommendation: It is advisable that all persons who received the representative's designation be notified of this withdrawal.

This brochure is available free of charge at the FPS Public Health, Food Chain Safety and Environment.

For extra copies, please enquire at the following address:
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