



Chancellor of Justice

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Your ref

Our ref. 30 April 2020 No. 16-
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Obstetric care in Estonian hospitals during the emergency situation

Honourable Minister,
Honourable Director General,

The Chancellor of Justice has received inquiries regarding obstetric care during the emergency situation, been in contact with professional associations, and monitored media coverage of topics related to obstetric care. Complaints and questions have been raised regarding reserves of personal protective equipment in maternity wards, prohibiting birth partners from entering the hospitals, testing the people giving birth for Covid-19 and wearing protective masks.

The rights of people giving birth are protected by international conventions binding on Estonia as well as §§ 12, 16, 18, 26 and 28 of the Constitution of the Republic of Estonia. Restrictions are necessary and understandable for the prevention of contracting the virus in hospitals, but such restrictions cannot be excessive, considering the actual situation.

With respect to the ongoing emergency situation in Estonia, the Estonian Gynaecologists Society, the Estonian Midwives Association, the Estonian Paediatric Association, and the Estonian Perinatology Association drew up [recommendations](#) titled “Birth, and the monitoring of pregnant women and newborn babies during the COVID-19 epidemic”. The recommendations put forward by the professional associations are general guidelines for health care providers, and where a specific hospital can ensure the safety of patients and personnel, exceptions that are more beneficial for the people giving birth can be made. The Estonian Health Insurance Fund submitted these recommendations to hospitals on 19 March 2020 (No. 3-22/8969) with a cover letter that stated: “Please implement the attached recommendations into day-to-day work routines”.

Under applicable law, health care providers must decide on how to ensure the safety of everyone in the hospital in the best way possible, taking into account the means available to them. I ask that the Health Board and the Ministry of Social Affairs along with the Estonian Health Insurance Fund, hospitals, and relevant professional associations, quickly determine what can be done to allow hospitals to ease restrictions applied regarding the restrictions in obstetric care.

The hospitals’ needs (e.g. [personal protective equipment](#), etc.) for allowing birth partners to be present during birth must be assessed. Matters that must also be addressed include the administration of a Covid-19 test to people giving birth (including asymptomatic people giving birth), the times at which (upon being admitted to the hospital, while moving around in the hospital,

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or while in the maternity room) a person who has been admitted to the hospital to give birth must wear a protective mask, and the types of aid provided to those whose health condition excludes the use of masks.

Also during an emergency situation the UN Convention on the Rights of Persons with Disabilities must, among other things, be taken into account when organising obstetric care. More specifically, a birth partner might play an important role in protecting the rights of women with disabilities:¹ e.g. where a woman giving birth speaks Estonian sign language, and needs a birth partner to help with translating.

As relevant information is not currently available from the websites of all hospitals, I suggest that all of the necessary information regarding restrictions on obstetric care be published in plain and intelligible language on hospitals' websites as well as alongside the FAQ on the emergency situation website kriis.ee. Unfortunately, materials that are misleading and evoke fear are also circulating amongst future mothers.

Additional explanations and references

Under subsections 10 and 11 of § 1 of the Chancellor of Justice Act (CJA), the Chancellor of Justice performs the functions of the national institution for the promotion and protection of human rights, and the functions of promoting, protecting and monitoring the UN Convention on the Rights of Persons with Disabilities. Subsections 10 and 11 of § 1 of the CJA also apply to the protection and promotion of sexual and reproductive rights.

Sexual and reproductive rights are human rights that protect persons' sexual and reproductive health by relying on previously recognised human rights (i.e. rights established under domestic constitutions and international conventions). This means that in explaining the substance of sexual and reproductive rights, the relevant norms usually include the right to life, the right to health, the right to respect for private life, the prohibition of degrading treatment, the right to education, and the prohibition of discrimination. Thus, sexual and reproductive rights are also protected under §§ 12, 16, 18, 26 and 28 of the Constitution of the Republic of Estonia².

The UN first recognised sexual and reproductive rights at the 1994 International Conference on Population and Development in Cairo. In recent years, both UN institutions and committees monitoring the implementation of international conventions have confirmed states' obligations in protecting these rights.³ In its decisions, the European Court of Human Rights has, when elaborating on topics regarding sexual and reproductive rights, also repeatedly referenced provisions of the European Convention on Human Rights: e.g. Article 8 (right to respect for private life) and Article 3 (prohibition of degrading treatment).⁴ Separate references to sexual and reproductive rights are provided under the UN Convention on the Rights of Persons with Disabilities (Article 25(a)) and the UN Convention on the Elimination of All Forms of Discrimination Against Women (Article 16(1) (e)).

During the Covid-19 pandemic, hospitals might consider it necessary to administer Covid-19 tests to all women giving birth (including those who are asymptomatic). The precondition for this is

¹ See also the UN Committee on the Rights of Persons with Disabilities, General Comment No. 3 (women and girls with disabilities), CRPD/C/GC/3, 2016.

² See also the Constitution of the Republic of Estonia, Commented Edition, comments on § 26.

³ See e.g. the UN Committee on Economic, Social, and Cultural Rights, General Comment No. 22 on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social, and Cultural Rights), E/C.12/GC/22, 2016; the UN Human Rights Committee, General Comment No. 36 (Article 6 of the International Covenant on Civil and Political Rights, right to life), CCPR/C/GC/36, 2018; Views adopted by the UN Human Rights Committee in *Whelan v. Ireland* (2017), *Mellet v. Ireland* (2016), Views adopted by the UN Committee on the Elimination of all Forms of Discrimination Against Women in *S.F.M. v. Spain* (2020).

⁴ E.g. *P. and S. v. Poland* (2013), *I.G. and Others v. Slovakia* (2013).

sufficient testing capacity. In situations where there is no time to administer a test to a person giving birth (e.g. the person is in active labour already), or the person refuses to be tested, the person must not be left without obstetric care. Health care workers must be provided with adequate and appropriate personal protective equipment.

Under clause A no. 1 of the professional associations' recommendations, "birth partners and family members are not allowed into the hospital together with people giving birth". Hospital visitations have been restricted during the emergency situation, but a birth partner's role is different from that of a visitor, which means that the presence of a birth partner cannot always be replaced by a video call option. The WHO has repeatedly analysed research results and [has emphasised the importance of birth partners in obstetric care.](#) The positive role of birth partners has also been pointed out in an Estonian context.⁵ Scientific research has shown that [birth partners can help overcome communication gaps between a health care worker and a person giving birth, provide both physical and emotional support, and help communicate the wishes of a person giving birth.](#)

Prohibiting obstetric care without exceptions means that a person who delivers a stillborn baby would also be left without support from a birth partner. In connection with the Covid-19 epidemic, the WHO [has emphasised](#) that all women (including women suspected of having contracted the virus or women who have received such a diagnosis) have a right to receive quality care before, during, and after birth. A safe and positive birth experience also involves the respectful and humane treatment of a person giving birth, the presence of a birth partner chosen by a person giving birth, clear communication from health care workers, appropriate pain relief, mobility in labour where possible, and a birth position of choice.

Hospitals in numerous European countries have implemented additional safety measures. Certain changes have been implemented in the organisation of obstetric care at hospitals in Finland, Norway, Denmark, Germany, the UK, France, and Ireland (e.g. only one birth partner, who is healthy, wearing personal protective equipment and/or is only allowed to be in the maternity room without the right for an overnight stay, can be present), but all of these countries also state the importance of birth partners.

Respectfully

/digitally signed/

Ülle Madise

Attention:

Estonian Health Insurance Fund, Minister of Population, Gender Equality and Equal Treatment
Commissioner

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⁵ Pöllumaa, S., Niin, K., and Trossmann, T., (2016). The professional experience, attitudes, and practices of Estonian hospitals' maternity ward midwives concerning normal childbirth.