Editorial

Sustainability of Healthcare Systems:
Aligning the Safety and Quality Debate with the Debate on the Financing Systems and Mechanisms

Parties, taking into account health needs and available resources, shall take appropriate measures with a view to providing within their jurisdiction, equitable access to healthcare of appropriate quality.¹

1. Introduction

Every other two years, the Dutch Association of Health Law distributes a prize to an author of a publication that qualifies because of its quality, originality and contribution to the development of health law.² At the yearly session of the Association on 19 April 2013, the price was attributed to Dr. Emke Plomp for her thesis on profit in healthcare: legal aspects of distribution of profits by hospitals and independent clinics in the Netherlands (= healthcare market).³, ⁴ One of the conclusions of the thesis is that a prohibition on profit-making by healthcare services restricts the functioning of the EU internal market (freedom of establishment) and that it is uncertain whether such a restriction would be justified. If not, the prohibition would run counter to the freedom of establishment in the EU.

However, distribution of profits by hospitals and independent clinics to third parties and market competition may create risks for patients. Private interests must not interfere with the performance of public or private health-related duties.⁵ Public money should not leak away through profit distributions. To guarantee the public interests involved with equitable access to healthcare of appropriate quality, legislative measures are necessary. The author’s suggestions include a

²) The prize is intended as an encouragement for good quality publications in the field of health law, written in Dutch by Dutch authors.
⁴) At the same meeting, Mrs. S. Tack received an honorable mention for her article “Recht op (uitvoering van) euthanasie? Instellingsbeleid en de professionele autonomie van de arts” (Right to (performance of) euthanasia? Policy of healthcare establishments and the professional autonomy of the medical doctor), *Tijdschrift voor Gezondheidsrecht/Revue de droit de la santé* 1 (2012) 7-22.
governance structure of for-profit providers (e.g. a mandatory healthcare governance code), limitation of the influence of shareholders on policy decisions, as well as measures to guarantee the financial stability of the healthcare system and the continuity of care. An additional suggestion would be to stipulate that for-profit healthcare establishments invest part of their profits in the healthcare sector. Next to this, one may expect that for-profit healthcare services deliver good quality care for a lower price when compared with not for-profit healthcare services (= cost-effectiveness). Achieving greater efficiency and better value for money is a key governance objective.

A week before the distribution of the prize, the Volkskrant, one of the leading Dutch daily newspapers, published an article showing how easy it is in the Netherlands to open a private drug-addiction clinic with the agreement of the Minister of Health, to have the clinic registered with the Chamber of Commerce and to receive payment for treatments from the health insurance companies. The services that were charged qualified for refunding under the Dutch mandatory health insurance. The detox clinic, set up by journalists of the newspaper, did not have one single competent healthcare professional among its personnel. Economically, private initiatives fare well with the present legal possibilities in the Netherlands for establishing private healthcare clinics. According to the newspaper, over the past 5 years, the costs of detox services have increased by 40%, to 380 million Euros in 2011, of which about 100 million Euros for private clinics. A quick scan by one of the Dutch health insurance companies showed that new private clinics charge double in comparison with the “traditional” health services. But the treatment in the private clinics has not proven to be more effective in comparison with the “traditional” not-for-profit health services. This is all the more distressing in the light of the drastic cuts in the healthcare budget envisaged in the Netherlands.


The fact that the State is responsible for the health of its population does not necessarily imply that the State itself should take care of providing and funding necessary healthcare services. Irrespective of the healthcare financing system and the payment and reimbursement mechanisms, governments must look on that necessary health services of good quality are available, fairly distributed and affordable for all (equally accessible).  

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6) Supra note 5, appendix: an example of a good governance assessment matrix.