

# Changes in the Organisational-Legal Form of Hospitals

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*Olga Angelovská<sup>1</sup>*

## Abstract

The contemporary legal form of contributory organisations is, in the case of hospitals, considered outdated. There were several attempts to change the unsatisfactory law, which dates back twenty years and which had been claimed to be a temporary regulation. The reason for the absence of significant change is undoubtedly the political sensitivity of the matter. There are currently three options. In addition to remaining in the current state, it is either a move towards one of the existing legal norms, namely a joint-stock company, or the adoption of new legislation for a new legal form of non-profit health organisation. Given the deficiencies of the current legislation and the specific needs of hospitals, we tend to prefer to adopt new legislation addressing the position of a non-profit health organisation, including the setting up of university hospitals. The policy paper is intended for government authorities and the general public to give a picture of the possibilities of dealing with the unsatisfactory legal form of large hospitals founded by the Ministry of Health.

## Goal

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The contemporary organisational-legal form of Czech hospitals run by the Ministry of Health as budgetary organisations is already outdated and does not fulfil the actual needs of these organisations. During the last twenty years, there were several unsuccessful attempts to change. The main goal of the paper is to propose a way to use a window of opportunity and enforce sustainable changes in the organisational-legal form of Czech hospitals.

The reorganisation of hospitals in recent decades has been accompanied by many changes, including increasing pressure on public administration officials requiring a change in management and control in public organisations. The com-

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1 Faculty of Social Sciences, Charles University, Prague, Czech Republic.

bination of these pressures has prompted the need for new managerial approaches in public hospitals and has forced health policymakers to consider a new organisational form of care provision by public hospitals. In the case of a wide debate, including the general public and professional organisations, the potential change could be sustainable.

## **Policy Client**

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The policy paper is intended for government authorities and the general public. The government authorities, above all the Ministry of Health, are the initiators of the legislative changes. The general public, particularly professional organisations, influence the sustainability of the new policy, especially when the changes are in such a sensitive area as health care.

## **Policy Aim**

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The main policy aim is to increase the sustainability of change in the organisational-legal form of hospitals, in particular by increasing the involvement of loyalty and interest organisations in the debate on the proposal for change. At the same time, there is a need to find a longer-term consensus across political parties to avoid the risk of repealing the law with a new parliamentary term.

Public awareness (caused by better access to information concerning the change) lets people make personal choices in their engagement with health institutions and can guarantee the protection of the public interest. One of the policy aims is to better inform the public about the proposal (the number of published articles or reports on Ministerial web pages or in the media). The second aim is to invite interest organisations for open discussion on the proposal. The form of such an approach can be a round table. (number of round tables, number of participants and their structure). The eventual aim is to find consensus in Parliament (the number of political parties included in the debates, maintaining a proper route for the legislative process).

## **Background to the problem – A contributory organisation as an outdated but surviving legal form**

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Transformational changes in health took place very quickly at the beginning of the 1990s. The emphasis was placed on the de-nationalisation of health care, de-monopolisation and decentralisation, whilst the development of the legal framework of the health law was characterised by temporary solutions that did, however, persist for quite some time. The process of a non-conceptual approach concerning the status of hospitals continued with public administration reform at the beginning of

the new millennium. It became a significant incentive for contemporary legislation of contributory public organisations arising from Act No. 219/2000 Coll. which should only have been a temporary regulation, as was stated in the explanatory memorandum of the proposal. Contributory organisations should primarily be state service organisations through which the state would fulfil its tasks. However, the legislation does not reflect the particularity of the specific activities that are carried out by state contributory organisations. One such specific activity is also the provision of health services.

In 2004, the Czech Medical Chamber (CMC) initiated a proposal on Public Non-Profit Institutional Health Facilities, which was later developed by the Ministry of Health. The hospitals should be transformed into non-state non-profit organisations. The Act itself establishes a special type of health care facility, which can be established by the state (Ministry of Health), region or municipality. Every hospital in the Czech Republic, including private hospitals, could decide to become public and accept the supervision of the Ministry, which would then become involved with its operations and decision-making, and in exchange, gain access to the public health insurance system. If the hospital remains outside the system, it can continue to treat patients, but without the right to receive payments from the public health insurance system. It was the only Act that was validated, but it did not have any real effect. It was abolished within five years with the justification that the norm had never been used in its five years of validity. No non-profit hospital was established. However, it was the only successful attempt at legislative change. The hospitals run by the Ministry of Health remained contributory organisations.

The second significant attempt to change the organisational-legal form of hospitals took place in 2007. In contrast to the previous proposal in 2004, the Ministry of Health discussed the preparatory Bill with a number of actors within the so-called round table. Due to significant last-minute changes to the draft, which were not discussed with the other actors, the proposal had no support, not only from the opposition but also from the coalition — the proposal planned to transform hospitals into joint-stock companies.

De facto elections in 2013 led to the rebirth of the Act on non-profit health organisations. In their coalition agreement, the ruling parties pledged to adopt a law on non-profit health facilities that would create a backbone network of hospitals. The law would also include the positioning of teaching hospitals with the participation of universities in their management. The potential new legal form was presented as suitable, not only for contributory organisations, but also for training hospitals and regional hospitals in the form of joint-stock companies. It did not, therefore, include a mandatory changeover to the new form or claimed conclusion of contracts with insurance companies. During the discussions of the Act in 2015, several significant features emerged and, after criticism, they were modified by the Ministry. It was the case of, for example, tax relief for non-profit hospitals or a lim-

ited number of hospitals that could be transformed into non-profit hospitals. The proposal highlighted the role of university hospitals. At the end of the interdepartmental comments procedure, the proposal returned with a large number of comments (over 370). A large number of the comments were incorporated, for example many accounting changes, the guarantee of the state for the obligations of hospitals, and the possibility of a judicial review of the registration of hospitals as non-profit hospitals. The proposal thus experienced significant changes compared to the one-year-old version. At the end of the process, there was a new proposal on university hospitals only. At the same time, the Ministry requested an abridged comments procedure, which lasted only five days and which was the subject of sharp criticism. At the same time, the RIA was not drawn up to the Act. Nevertheless, the Bill passed at first reading. However, the Parliamentary Committee postponed its proceedings until the end of September and failed to discuss the law prior to the next election.

## **Alternatives for Change**

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### **The zero variant**

This variant assumes the maintenance of the current situation, where hospitals as budgetary organisations will be limited in independent decision-making (essential decisions require the founder's approval under the direct control of the founder) and they are obliged to ensure that the payments to which the contributory organisation pledges do not exceed its budget for the relevant year. They will also be further restricted in their economic activities because they cannot carry out large-scale investment activities or they cannot conclude financial leasing contracts. They are dependent on the founder in the event of insolvency or indebtedness, and they cannot deduct the tax loss from the main activity from the tax base for other activities, so they are not allowed to reduce profits in other activities by the loss of the main activity. It is not possible to make a significant distinction between better-performing contributory organisations and less well-run contributory organisations. It leads to insufficient motivation for the effective use of state property in terms of both pay regulations and state property management. They have no conditions for the development of multi-source financing.

Generally, the whole political representation agrees that the current legislation is inappropriate and that there is a need for change. The zero variant is not suitable and only comes into consideration if a more appropriate solution cannot be found, i.e. if hospitals cannot have a different legal form from the state contributory organisation. There are no additional costs to continue in the zero variant. Because there is no change, there is also no need to discuss with the interest groups or public.

### **The use of one of the already existing legal forms**

The legislation of the Czech Republic regulates many types of legal entities, such as companies, foundations, funds, associations, registered institutes. These existing legal forms do not correspond to the objectives pursued, in terms of the requirements for the management of inpatient health care providers, the financing of their activities, non-profit management and contractual relations with health insurance companies; at the same time to ensure the efficient and economical use of public health insurance funds. The variant does not solve the relationship between hospitals and universities.

Some forms of companies are not applicable to non-profit hospitals. The law allows the State to establish a company or to participate in its formation only in the form of a joint-stock company. Nowadays, most of the regional hospitals run in the form of a joint-stock company. Theoretically, this option entails the risk of privatisation and a possible reduction in access to health services. In practice, these concerns have not been met in the case of hospitals funded by regions and municipalities. In the case of purely private hospitals, in some cases, cream-skimming appeared when hospitals preferred better-priced specialisations — their behaviour then had an impact on other hospitals which provided loss-making disciplines.

For sustainability of the alternative, it is necessary to keep discussions open, especially with interest groups.

### **The new legal form of legal entity, i.e. non-profit health organisation**

The legal form of a non-profit health organisation will only concern the provision of in-patient health care and related health services. This new legal form of legal entity will enable it to be managed in a managerial way and clearly define the management's responsibility for economic activities. It will be a transparent and efficient management of the assets of a non-profit health organisation. Decisions on the principal issues will be made with the participation of the Board of Directors and the Founder, and they will have the full responsibility of the bodies of the non-profit health organisation (director, board) for its activities.

Concerning the relationship with the universities, the new legal form will consist of arrangements for cooperation between a non-profit health organisation and a university. The Act will lay down the conditions for its establishment, structure and activities of the authorities, rules of management on the principle of non-profit and basic rules of cooperation with universities and other educational institutions in the education of health workers and other healthcare workers.

It is necessary to open up the possibility of becoming a non-profit health organisation to other health service providers whose founder or co-founder is not the state. The new legal form should improve employees' motivation in a non-profit health organisation by using the option of contractual salary.

The third variant will bring costs connected with the transformation to the new organisational-legal form. Also, the round tables should be organised to find consensus between most of the political representatives to increase the chance for the sustainability of the new Law.

## Stakeholders

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The main stakeholders, as a subject of the reform, are hospitals in the form of state *contributory organisations* (approximately 15 organisations). Already in the past, they proved their interest in the change of the organisational legal form with a preference for a non-profit health organisation (or potentially university hospitals as non-profit health organisations).

The other stakeholders are:

- *Ministry of Health* – as a founder of contemporary hospitals as contributory organisations – in the former preferred non-profit form, nowadays we may expect the preference for the status quo;
- *local and regional authorities* as founders of regional hospitals prefer the current state or second option because the funded hospitals are quite often in the form of joint-stock companies;
- *universities and other educational institutions* involved in health education prefer non-profit organisations with improved conditions for the cooperation between hospitals and universities;
- *health insurance companies* as managers of money for health insurance;
- *professional organisations*
  - the Czech Medical Chamber – as a very important and active actor, who made several previous proposals;
  - Czech Pharmacy Chamber, Czech Dental Chamber, Association of GPs, Association of paediatricians;
  - Trade Union of Health and Social Care;
  - Czech-Moravian Confederation of Trade Unions, Confederation of Industry and Transport or Association of Health Insurance Companies.

## Policy Recommendation

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The current legislative setting hampers hospitals which are still operating as a contributory organisation, in their development. Of the offered options, the third variant is the most suitable, which, in addition to the managerial side of hospitals, would help solve the problem of set-up in the case of university hospitals.

Based on previous experience in 2006 and 2017, we can say that political feasibility will depend on several factors. In addition to the current composition of the political representation, previous discussions of the proposal with the relevant stakeholders, especially hospitals, the Czech Medical Chamber and other interest organisations, play a crucial role. We recommend the form of a round table.

Due to the nature of the provided service, we recommend that the non-profit organisation benefits from a tax advantage. In this case, it is necessary to negotiate a specific setup with the Ministry of Finance, which, for these reasons, hindered the last attempts to change.

Given the difficulty of the problem, it is necessary to submit the bill for comment at the beginning of the parliamentary term and avoid shortening the deadlines so that the bill can be appropriately commented. In the light of previous experience, it is necessary to develop RIA.

## **Conclusion**

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In the Czech Republic, there have been unsuccessful attempts in recent decades to change the organisational-legal status of hospitals. At the same time, the current regulation of contributory organisations is perceived as unsatisfactory and outdated. Currently, we can identify three basic solutions. The first is keeping the status quo. The second is to move towards one of the existing legal norms, namely a joint-stock company. The last one consists of the adoption of new legislation of a non-profit health organisation.

We propose the last alternative of the new legislation as the most suitable choice. For its successful adoption, it is necessary to fulfil several prerequisites, in particular, to devote sufficient time to discussing and adjusting the new law, not to submit the standard at the end of the parliamentary term, and to involve stakeholders and find political consensus.

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