**Reply of the Polish Government to the message from the Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, regarding the questionnaire on the rights of persons with disabilities to the highest attainable standard of health.**

**With regard to question no. 1.: please provide information on existing or planned legislation and policies to ensure the realization of the right to health of persons with disabilities, including current challenges and good practices.**

All services are provided in compliance with the same rules that apply to people without disabilities under the Act of 27 August 2004 on Healthcare Services Financed from Public Funds. Healthcare services are provided after assessing the current health condition of an individual.

**With regard to question no. 2.: please provide any information and statistical data (including surveys, censuses, administrative data, literature, reports, and studies) related to the exercise of the right to health of persons with disabilities in general, as well as with particular focus in the following areas:**

* Availability of barrier-free general healthcare services and programmes, which take into account all accessibility aspects for persons with disabilities.

Basic issues regarding access of persons with disabilities to public buildings, including health centres, are laid down in construction laws. The Regulation of the Minister of Health of 26 June 2012 on Specific Requirements for Facilities and Equipment of Healthcare Entities specifies the way in which rooms should be arranged to enable persons with disabilities, including wheelchair users, to move (access to hygiene-sanitary rooms and to a medical rehabilitation centre).

New governmental Programme on improving accessibility in Poland.

Referring to the nomination of Prime Minister Mateusz Morawiecki and mentioned in his expose new program: *Accessibility + (plus),* Polish government is profoundly dedicated to this issue and we do hope that the programme might become a significant source of finance for this initiative. This Programme is already under development and it is expected to be ready in II quarter of 2018. The main aim of the taken actions is to include the concept of public space accessibility as part of a comprehensive program, operationalizing objectives in the short and long term vision, ensuring multifaceted systemic activities and establishing an inter-ministerial coordination center in the structures of government administration.

The main objective of the program is to improve the quality and ensure the independence of life for all citizens, including in particular elderly people and people with permanent or temporary constraints in mobility or perception. This is to be served by the improvement of the accessibility of public space, products and services in the aspect of architecture, information and communication. The specific objectives of the program have been defined around the three pillars. It applies: creating a legal and institutional framework for the implementation of accessibility; improving physical and digital accessibility of products and services and using the availability of products and services to increase the competitive advantage of Polish enterprises. Therefore the highest priority is oriented around improving the accessibility of public places for all citizens (e.g. passages, parks, community centers, schools, libraries and churches) and universal services (e.g. banking, postal, transport, audiovisual).

Implementation of the principle of equal opportunities and non-discrimination, including people with disabilities and equal opportunities for men and women under 14-20 programing period.

When it comes to the EFSI support in the health area the recommendations of the Steering Committee on Coordination of EFSI intervention in the health sector are worth mentioning. Under Investment priority 9iv Enhancing access to affordable, sustainable and high quality services, including health care and social services of general interest (ESF projects) act of the Steering Committee (no. 24/2016) constitutes that only projects compatible with the relevant tool defined in the document National Strategic Framework. Policy paper for health protection for 2014-2020 can be accepted for cofinancing:

* Tool 18 - Support for the deinstitutionalization of care for dependent persons, through the development of alternative forms of care for dependent persons (including the elderly).
* Tool 19 - Implementation of programs for early detection of developmental defects and **rehabilitation of children at risk of disability and children** **with disabilities**.

Under Investment Priority 9a *Investment in health and social infrastructure which contributes to national, regional and local development, reducing inequalities in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and the transition from institutional to community-based services* (ERDF projects) act of the Steering Committee (no. 28/2016) constitutes thatproject selection criteria award projects:

* involving solutions contributing **to popularize the use of improvements for people with disabilities** and dependent persons;
* in which the supported infrastructure will be adapted - in accordance with the concept of universal design - **to the needs of people with various forms of disability**.
* Access to free or affordable general healthcare services and programmes, including mental health services, services related to HIV/AIDS and universal health coverage and access to free or affordable disability-specific healthcare services and programmes

The Polish healthcare system does not differentiate on the grounds of disability. Data concerning patients with disabilities is collected in scheme reports and are not registered in medical records. All data relating to the exercise of the right of persons with disabilities to healthcare are estimates. All services are rendered based on exactly the same principles as for people without disabilities, pursuant to the Act of 27 August 2004 on Healthcare Services Financed from Public Funds. Healthcare services are rendered after assessing the current health condition of a patient. Persons with disabilities are entitled to additional benefits in the health care system (reimbursed medicines and medical devices) which are available on prescription. Medical doctors or pharmacists write out prescriptions on the basis of additional documents submitted by patients that confirm their special status (it is not the basic document to confirm disability). These documents guarantee additional benefits (such as the right to be issued with a document confirming disability), on the basis of a list annexed to the Regulation of the Minister of Health of 8 March 2012 on Medical Prescriptions.

* Access to free or affordable health-related habilitation and rehabilitation goods and services, including early identification and intervention.

Persons with disabilities are entitled to rehabilitation according to the Regulation of the Minister of Health of 6 November 2013 on Guaranteed Services Involving Medical Rehabilitation.

The guaranteed services are rendered in the following settings:

* in outpatient clinics (medical outpatient rehabilitation care, outpatient physiotherapy);
* in domestic conditions (medical rehabilitation counseling, home care rehabilitation);
* in day centers or wards (rehabilitation of the whole body, rehabilitation of children with development age disorders, rehabilitation of people with impaired hearing and speech, rehabilitation of people with impaired sight, cardiologic rehabilitation and pulmonary rehabilitation using subterraneotherapy);
* in residence care (rehabilitation of the whole body, neurological, pulmonary, and cardiologic rehabilitation).

The regulation will be amended this year to address the current challenges.

The main acts that regulate the system of reimbursement of medical devices in Poland include:

* Act of 20 May 2010 on Medical Devices,
* Act of 12 May 2011 on Disbursement of Pharmaceutical Drugs, Special Purpose Foodstuffs and Medical Devices,
* Act of 27 August 2004 on Healthcare Services Financed from Public Funds,
* Regulation of the Minister of Health of 29 May 2017 on the List of Dispensed Medical Devices,
* in other regulations and notices.

In Poland, medical devices are supplied in the following manner: to an entitled person (e.g. orthotic devices, hearing aids, diapers), in the form of prescriptions (dressings and test strips), in specialist outpatient clinic care (e.g. insulin pomp, oxygen therapy device), in hospital treatment (e.g. prosthesis) or in highly specialized treatment (e.g. pacemakers, cardiac valves).

Early child development support is provided from the moment disability is detected in children until they start school education. To be eligible for such support, the child must obtain an evaluation issued by an assessment committee operating within a public psychological and educational counselling centre, including a public specialised centre[[1]](#footnote-1)[1].

Teams dedicated to early child development support may be set up at the following public and non-public institutions: nursery and primary schools, including special schools, alternative forms of pre-school education, special schooling-and-care centres, special care centres, rehabilitation and education centres, as well as psychological and educational counselling centres, including specialised centres[2]. The work of such teams is organized by way of regulation[3].

An educational institution hosting an early child development support team must have staff who is qualified to conduct early support classes, as set out in provisions issued on the basis of Art. 9 (2) of the Teachers’ Charter Act of 26 January 1982. Moreover, such institution must have rooms for individual and group classes in early support, featuring specialist equipment and educational materials that address developmental and educational needs of children and their psychological and physical abilities.

An early development support team is composed of: a teacher qualified to deal with the child’s disability, a psychologist, a speech therapist, and possibly also other specialists depending on the needs of children and their families.

The role of an early development support team is:

* to determine the directions and schedule of actions to be taken as part of early development support and assistance to the child’s family based on the assessment of a child’s functioning as set out in the evaluation of the need for early development support. Such actions should take into account the need to make children more active and engaged in social life, and to eliminate barriers and limitations in the environment that affect their functioning;
* to cooperate with the child’s parents, treatment centre, social welfare centre, nursery school, alternative form of pre-school education, pre-school section at a primary school, and other entities that provide the child with therapeutic programmes;
* to assess the child’s progress and difficulties he or she may have in functioning; to identify and eliminate barriers and limitations in the environment that impair active life and inclusion;
* to analyse the effectiveness of assistance provided to children and their families, to adapt the programme to the needs of children and their families, and to plan ahead.

The team keeps a detailed record of activities undertaken as part of an individual early development support programme, including the child development observation report. The report should:

* assess the child’s gross and fine motor skills, perception and communication abilities, emotional development, and behaviour,
* assess the child’s progress and his or her difficulties in functioning,
* detail specific activities conducted as part of early development support.

Funds for early child development support scheme are disbursed from the state budget as part of the general subsidy’s educational section.

Moreover, the For Life Comprehensive Family Support Scheme includes activity 2.4 called “Establishing coordination, rehabilitation and care centres with a focus on early child development support from the moment disability or a risk of disability is detected,” which will be implemented in 2017-2021*.*

It is projected that the following funds will be allocated to activity 2.4:

* 2018 – PLN 53.320 million;
* 2019 – PLN 62.580 million;
* 2020 – PLN 77.205 million;
* 2021 – PLN 77.205 million.

The Ministry of National Education has prepared an amendment to the System of Education Act[[2]](#footnote-2)[4] by introducing a new Article 90v, which is entirely dedicated to the For Life Programme, and drafted a regulation on specific tasks of leading coordination, rehabilitation and care centres[[3]](#footnote-3)[5].

The new provisions make it clear that establishing coordination, rehabilitation and care centres falls within the remit of the Minister of National Education, and as such classifies as public task in the field of government administration. This makes it possible to sign agreements with local governments, and make transfers from the Ministry of National Education’s budget to local governments’ budgets in the form of dedicated grants. This means that centres which are assigned to this task are provided with 100% of funding for that purpose, without the need to ensure a 20% contribution.

Moreover, the new provisions task county heads (*starosta*) with designating a public nursery or primary school, including a special school, or an alternative form of pre-school education, or a special schooling-and-care centre, or a special care centre, a rehabilitation and education centre, or a psychological and educational counselling centre, including a specialised centre, which meets the conditions specified in provisions issued on the basis of Article 127 (19) (1) of the Educational Law Act[[4]](#footnote-4)[6], to act as the county’s leading coordination, rehabilitation and care centre and provide comprehensive support to families with children, from the moment disability or a risk of disability is identified in children until they start school education, with emphasis on children under 3 years of age.

Consequently, the programme will finance additional tasks that will be carried out at the country level by the centre that has so far been providing early child development support, funded under the educational subsidy.

The provisions also define basic tasks of leading centres, including comprehensive support for families with children from the moment disability or a risk of disability is detected in children until they start school education, with emphasis on children under 3 years of age. Such support focuses on providing families with information, ensuring specialist services according to the needs of children and their families, and coordinating the use of available services, notably early child development support and medical consultations (depending on the needs, it is possible to employ medical doctors).

**With regard to question no. 3.: please provide information on discrimination against persons with disabilities in the provision of healthcare, health insurance and/or life insurance by public or private service providers.**

The Act of 27 August 2004 on Healthcare Services Financed from Public Funds makes no distinctions between various groups of patients when it comes to access to healthcare services guaranteed by the state. This means that all patients with disabilities and non-working patients who have similar health needs have the same access to healthcare services.

The Act, however, also addresses special needs of persons with disabilities, such as:

1. persons who are eligible for welfare benefits and members of their families must be covered by universal health insurance (Art. 66),
2. if not insured, people applying for an invalidity pension and members of their families have access to healthcare services that are financed by the Polish state (Art. 67),
3. people with invalidity pensions do not pay health insurance contributions if their welfare benefits are lower than or equal to the minimum wage (Art. 82),
4. healthcare services which protect against disability are part of the services package guaranteed by the state (Art. 15),
5. blind civilian victims of war have access to all pharmaceutical drugs without the necessity to make out-of-pocket payments (Art. 46),
6. protection from the danger of disability – or a more serious form – has been recognized as a criterion to be taken into account when managing waiting lists (Art. 20),
7. children with a severe disability (without age-limit) are exempt from food and accommodation costs in child health resort hospitals, child health resorts and health resorts (Art. 33).

In the applicable legal regime all patients are treated equally and have guarantees of their rights and instruments to assert those rights if violated. Under Art. 2 of the Act of 6 November 2008 on Patients’ Rights and the Commissioner for Patients’ Rights, state authorities dealing with health protection, the National Health Fund, healthcare entities, people who practice medical professions and other people who participate in providing healthcare services are obligated to respect statutory patients’ rights. Art. 11 (1) of the Act on Patients’ Rights orders entities which provide healthcare services to make information on patients’ rights available in writing, by displaying it in their facilities in a place accessible to the public. The information should be also made accessible to patients with reduced mobility by making sure that they can read it in the room where they are staying. Each patient has the right to:

1. healthcare services;
2. information;
3. secrecy of information concerning him or her;
4. expressing his or her consent to receive healthcare services;
5. respect for patients’ intimacy and dignity;
6. medical records;
7. protest against a medical doctor’s opinion or certificate;
8. respect for his or her private and family life;
9. pastoral care;
10. put valuable objects in a deposit.

In the light of the above it is important that relevant procedures be instituted in all situations when a patient feels that their rights were violated.

Taking this into account, and commenting on the issue of respecting the right to free and informed consent by persons with disabilities to receive healthcare services, including in particular services involving reproductive and psychological health, I wish to kindly inform you that pursuant to Art. 16 of the Act on Patients’ Rights, patients have the right to express their consent or refusal to receive certain health services, after receiving information to the extent that is provided for in the Act on Patients’ Rights.

**With regard to question no. 4.: please provide information on the observance of the right to free and informed consent of persons with disabilities regarding healthcare, including sexual and reproductive health and mental health services.**

All citizens, including persons with disabilities, have the general right to free and informed consent that is laid down in the Act on Patients’ Rights.

Under Art. 31 (1) of the Act of 5 December 1996 on the Profession of Medical Doctors and Dentists, medical doctors can conduct medical examinations or provide other healthcare services if the patient agrees. In the case of a minor or a person who is not capable of expressing their informed consent, the consent of a statutory representative is required. If there is no statutory representative, or if it is not possible to obtain their consent, a competent court may give its consent. If there is a need to examine the minor, the “real guardian” may give their consent.

The consent of a person who has been legally incapacitated is expressed by this person’s legal representative. If such a person is able to express his or her opinion about the treatment, it is necessary to obtain this person’s opinion.

The above provisions apply to all healthcare services, including reproductive health services.

Moreover, a medical doctor is obliged to provide patients or their representatives with all available information about their health, diagnosis, proposed and possible diagnostic and therapeutic methods, foreseeable consequences of using or refraining from them, treatment outcomes and prognosis.

If the patient is under 16 years of age, unconscious or unable to understand the information, a medical doctor will transmit the information to his or her relative (according to Art. 3 (1) (2) of the Act on Patients’ Rights). This applies to information on all healthcare services, including reproductive health services.

**With regard to question no. 5.: please describe to what extent and how are persons with disabilities and their representative organizations involved in the design, planning, implementation and evaluation of health policies, programmes and services.**

According to the report “Patients’ Organizations in Poland. Structure – Activities – Needs,” published in February 2018 by the Institute for the Rights of Patients and Health Education, an NGO, there are currently approximately 5,300 active healthcare organizations in Poland, including around 1,000 entities focused on patients. 45% of organizations advocating patients’ welfare are active across Poland. 24% operate only on a local scale, i.e. mostly in their immediate neighbourhood. An average healthcare association has 40 members.

Three separate umbrella initiatives bring together patients’ organizations that cooperate with the Ministry of Health:

1. Dialog dla Zdrowia (Dialogue for Health) – a series of regular meetings (once a month or once every two months) with organizations supporting patients, initiated in 2012. The platform offers cooperation opportunities for all-Poland federations, organizations with local outreach, and organizations representing selected groups of patients suffering from a specific condition.
2. Obywatele dla Zdrowia (Citizens for Health) – a movement founded in October 2016. Among its most active members are: Polish Cancer Patient Coalition, National Federation of Polish NGOs OFOP, Urszula Jaworska Foundation, Wygrajmy Zdrowie Foundation, Institute for Patients’ Rights and Health Education, Federation of AMAZONKI Associations, and National Federation of Associations of Rheumatics REF.
3. Razem dla Zdrowia (Together for Health) – an initiative launched by the We Patients Foundation which runs the project in tandem with the Supreme Medical Council, Supreme Council of Nurses and Midwives, and Supreme Pharmaceutical Council.

In 2016, the Ministry of Health, acting in the capacity of an intermediary institution for the 2014-2020 Knowledge Education Development Programme (PO WER), held a contest to select measures aimed at developing social dialogue in healthcare, addressed to NGOs.

The contest targets projects that develop social dialogue and the concept of social responsibility of healthcare system institutions, by supporting cooperation between healthcare system administration and patients’ organizations. Its objective was to select at least 23 non-governmental organizations representing patients that would be involved in the process of public consultations regarding healthcare measures adopted by state administration. The projects are supposed to run in 2016-2018.

3 projects were selected for implementation:

* Razem dla Zdrowia (applicant: We Patients Foundation);
* Obywatele dla Zdrowia (applicant: Polish Cancer Patient Coalition);
* Wspólnie decydujemy – support for public consultations in healthcare (the project is run under Dialog dla Zdrowia).
1. [1] Art. 127 (10) of the Educational Law Act.

[2] Art. 127 (5) of the Educational Law Act.

[3] Regulation of the Minister of National Education of 24 August 2017 on the Organization of Early Child Development Support (Journal of Laws items 1635). [↑](#footnote-ref-1)
2. [4] System of Education Act of 7 September 1991, (Journal of Laws of 2017, item 2198, as amended). [↑](#footnote-ref-2)
3. [5] Regulation of the Minister of National Education of 5 September 2017 on Specific Tasks of Leading Coordination, Rehabilitation and Care Centres (Journal of Laws item 1712). [↑](#footnote-ref-3)
4. [6] Educational Law Act of 14 December 2016 (Journal of Laws of 2017, item 59, as amended). [↑](#footnote-ref-4)