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## NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/86

### I. Order

The Health Regulatory Authority (ERS) sent the National Data Protection Commission (CNPD), for consideration, the draft Regulation on the process of transferring users between health care providers.

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as the national authority for controlling the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of article 36 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3 and point a ) of paragraph 1 of article 6 of Law no. 58/2019, of 8 August.

The assessment of the CNPD is limited to the rules that provide for or regulate the processing of personal data.

### II. appreciation

The scope of the draft Regulation in question is the physical transfers of users between establishments providing health care in the public, private, cooperative and social sectors, whenever they determine the transfer of responsibility for the health care to be provided.

Under the terms of paragraph c) of article 4 of the Project, the establishment of origin must send the clinical report of the user to the establishment of destination, including an image in a digital record.

At the time of the transfer, the transfer accompanying letter must accompany the patient, which, in accordance with Article 3(a), consists of [in] the document containing the user's transfer order, the underlying reason the transfer, information on the patient's clinical condition (including, where applicable, information regarding the existence of a hospital infection), the establishment of destination, the contact point at the destination establishment responsible for accepting the transfer, the type of transport, the designation of the people! and necessary equipment, the therapies that must be provided during transport and the identification of the person responsible in the establishment of origin and also all the clinical information necessary to guarantee the continuation of care

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(cf. Article 4(d)). The medical act of decision to transfer the patient is preceded by direct contact with the establishment of destination where the patient's clinical condition will be presented, including diagnostic and prognostic formulations, interventions and therapies (cf. Article 8(1)(c) and 8(3)).

Article 11 of the draft Regulation, under the heading Clinical Information and Records, summarizes the clinical information to be sent to the destination establishment and makes a direct reference to Regulation No. 1/2017, of February 8, of the General Directorate of Health.

Thus, the draft Regulation in question contains rules on the collection and transmission of information, which, as they concern identified or identifiable natural persons, reflect the regulation of personal data processing operations (cf. paragraphs 1) and 2) Article 4 of the GDPR).

The CNPD has nothing to object to the general content of these rules, insofar as they appeal to the principle of proportionality of data processing, either in terms of adequacy or in terms of their need for the intended purpose (e.g., paragraphs c) and d) of Article 4 and Article 11 of the Project), in compliance with the provisions of Article 5(1)(c) of the GDPR.

It is only noted that the procedures for the transmission of information are not regulated, which as it respects special personal data under the terms of paragraph 1 of article 9 of the RGPD, taking into account the risks to the rights and freedoms of holders, especially in terms of confidentiality, requires the adoption of technical and organizational security measures appropriate to the risk (cf article 32 of the GDPR).

Approved at the meeting of July 28, 2020

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Filipa Calvão (President)