

Deliberation 2019-102 of July 18, 2019 National Commission for Computing and Liberties Legal status: In force Date of publication on Légifrance: Tuesday October 15, 2019 decree n° 2017-412 of March 27, 2017 relating to the use of the registration number in the national identification directory of natural persons as a national health identifier and articles R. 1111-8-1 to R. 1111-8 -7 of the public health code

(request for opinion no. 19012320)

The National Commission for Computing and Liberties, Seizure by the Ministry of Solidarity and Health of a request for an opinion concerning a draft decree amending decree no. 2017-412 of March 27, 2017 relating to the use the registration number in the national identification directory of natural persons as a national health identifier and Articles R. 1111-8-1 to R. 1111-8-7 of the Public Health Code; Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to the automatic processing of personal data; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (general regulation on data protection); Having regard to the Public Health Code, in particular its articles L. 1111-8-1 and R. 1111-8-1 and following; a modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its article 8-I-4°-a); the use of the registration number in the national identification directory of natural persons as a national health identifier; Considering decree n ° 2019-536 of May 29, 2019 taken for the application of law n ° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Considering the file; Having heard Mrs. Valérie PEUGEOT, commissioner, in her report and Mrs. Nacima BELKACEM, government commissioner, in her observations, Issues the following opinion: The Commission was seized by the Ministry of Solidarity and Health (hereinafter the Ministry), pursuant to Article 8-I-4°-a) of the law of January 6, 1978 (hereinafter the Data Protection Act et libertés), a request for an opinion on a draft decree amending decree no. 2017-412 of March 27, 2017 relating to the use of the registration number inclusion in the national directory for the identification of natural persons as a national health identifier and Articles R. 1111-8-1 to R. 1111-8-7 of the Public Health Code (CSP).Article L. 1111-8-1 of the CSP enshrined the principle of using the registration number in the national personal identification directory (NIR) as the national health identifier (INS) in order to allow, without risk of error and in the interest of patients, the exchanges and the sharing of health information between the multiple actors of the health and medico-social sphere. The decree n ° 2017-412 of March 27, 2017 relating to the use of the NIR as INS, codified to Articles R. 1111-8-1 et seq. of the CSP, has regulated the use

of the INS by subjecting it to compliance with the following fundamental guarantees, in particular: the INS must be used for exclusively health and medico-social purposes to reference the health data and administrative data of any person benefiting or called upon to benefit from a diagnostic, therapeutic, preventive act, pain relief, disability compensation, prevention of loss of autonomy or interventions necessary for the coordination of several of these acts; the actors directly concerned by the referral obligation are the professionals, establishments, services or organizations mentioned in article L.1110-4 of the CSP and the professionals forming a care team and involved in the health or medico-social care of the patient. user; access to the INS is by means of the health insurance card known as the Carte Vitale or, when this card is not accessible or does not contain the information, by the provision of teleservices for research and verification of the INS implemented by the National Health Insurance Fund (CNAM). A draft decree approving a reference system dedicated to the INS must define the methods of the obligation of reference encement of data and specify the procedures for monitoring and managing the risks and errors related to the identification of the persons covered. On the occasion of the reflections carried out around the drafting of this reference system, the ministry wished to make the treated INS more reliable and, in this perspective, to retain a systematic qualification of the INS by calling on the teleservices implemented by the CNAM.Or , the systematic use of CNAM teleservices is not provided for, as the provisions of article R. 1111-8-6 of the CSP stand. Also, a prior modification of the provisions of the decree of March 27, 2017 mentioned above is necessary to allow the publication of the reference system. The Commission indicates that beyond the modification made to article R. 1111-8-6 of the CSP, the draft decree also carries out the consistency made necessary, on the one hand, by the entry into application of the Data Protection Act amended by Ordinance No. 2018-1125 of December 12, 2018 and, on the other hand , by adjusting the INS deployment schedule. On these bases, the Commission makes the following observations: On the processing of INS for research purposes: The draft article R. 1111-8-2 of the amended CSP reintroduces the possibility of using the INS for research purposes and specifies the applicable legal framework. Indeed, it provides that the INS may be processed for research purposes in the field of health as mentioned in the last paragraph of Article 30 of Law No. 78-17 of January 6, 1978 relating to the information technology, files and freedoms, and authorized under the conditions provided for in section 3 of chapter III of title II of the same law. The Commission notes that article 21 of ordinance no. cited above deleted II of Article L. 1111-8-1 of the CSP which recognized the possibility of using the NIR as an INS for research purposes and which provided that the Commission could impose that the NIR be entrusted to an organization third party, separate from the data controller, authorized to hold the INS and responsible for carrying out the

necessary matching. It notes that the amended draft article R. 1111-8-2 of the CSP reinstates the possible processing of the INS for research purposes, provided that it is authorized in accordance with the provisions of section 3 of chapter III of Title II of the same law. Under these conditions, it indicates that the processing of the INS for research purposes does not raise any particular observations on its part. On the generalization of the use of CNAM teleservices to make the NIR used as INS more reliable: Firstly, in With regard to the use in principle of CNAM teleservices, the amended draft article R.1111-8-6 of the CSP systematizes the use of these devices, except in the event of unavailability of teleservices or a legitimate reason invoked by professionals , to:access the NIR used as INS;verify the accuracy of the INS collected by professionals and establishments as well as the identity traits of the users concerned.The Commission notes that these teleservices, via the collection of the INS, are likely to facilitate access to personal health data concerning the entire French population and that they are intended to be used by all professionals in the health and medico-society sector al (about 2 million people). It observes that the risks of interconnections and diversion of purposes could, as a result, be multiplied. It therefore considers it essential that these teleservices incorporate substantial security measures, strong enough to prevent the INS from being broadcast more than necessary and for diverted purposes, and which must be able to guarantee a high level of availability, integrity, confidentiality and traceability. Consequently, it requests that, in accordance with the provisions of Article 35 of the GDPR, these security measures be particularly detailed in the impact analysis relating to data protection that the CNAM will have to carry out prior to the implementation of the teleservices concerned. In addition, the Commission wonders about the notion of legitimate reason invoked by a health professional to justify that he does not proceed to the referencing of data from the INS and, consequently, about the possible risks circumvention of regulations. It requests that this point be clarified in the future reference system.Secondly, with regard to controlling the risk of error in the identification of persons, the draft article R. 1111-8-6 of the amended CSP indicates that the use of teleservices does not exempt professionals and establishments from implementing any procedure for monitoring, correcting and preventing errors relating to the organization of the care of people and contributing to the control of the risk of error in identification. The Commission considers that health data and personal administrative data, where applicable, their exchange and sharing must be based on a reliable indexing mechanism, which implies having the exact identity of the user in accordance with the provisions of article 5-1-d) of the GDPR, in order to avoid any risk of identity confusion, the consequences of which could be particularly serious. It recalls that an identity collection that would not be sufficiently reliable would call into question not only the resulting referencing operation, but also the entire chain of processing

of health data and administrative data indexed on the INS from of this referencing. An insufficiently reliable collection of identity would constitute a significant risk for the interoperability of local information systems while this interoperability is designed by the ministry to facilitate the decompartmentalization of care pathways and avoid duplicate records as well as collisions between identity leading to linking data from one person to another. More broadly, it would affect the quality and safety of the care provided to the user. Also, given the issues at stake, the Commission considers that referring to the responsibility of healthcare professionals and establishments in the development of monitoring procedures, correction and prevention of errors in the organization of user care, while useful, is not enough. It asks that the Ministry specify the procedures for verifying the identity of the users concerned by the referencing operation in the future reference system. Thirdly, with regard to the nature of the teleservices implemented by the CNAM, the project of article R. 1111-8-6 of the amended CSP qualifies these teleservices as electronic administration teleservices within the meaning of the provisions of Ordinance No. 2005-1516 of 8 December 2005 as amended relating to electronic exchanges between users and administrative authorities and between administrative authorities. The Commission notes that these teleservices will enable establishments and professionals in the health and medico-social sectors, as part of their obligation to reference data, to carry out an administrative procedure for retrieving and verifying the INS and identity traits of users with the CNAM. It notes that, for this reason, the Ministry has chosen to apply the provisions of the aforementioned ordinance. It takes note of this choice and indicates, consequently, that teleservices must comply with the general security reference system (RGS) provided for by decree no. 2010-112 of February 2, 2010 and must, as such, be subject to a risk analysis including the risks weighing on the persons concerned. It also recalls that it is up to the CNAM as data controller to formally certify the acceptance of the security level of teleservices through an RGS approval and to publish the approval certificate on its site. On the adjustment of the timetable applicable to the deployment of the INS and these implications in terms of formalities to be carried out with the Commission: Draft article 2 of decree no. 2017-412 of 27 March 2017 as amended incorporates a new schedule, requiring healthcare professionals and establishments to comply with the requirements set out in terms of data referencing before January 1, 2021. Furthermore, it removes, in addition to the publication dates of the INS reference system (whose publication was planned no later than March 31, 2018) and implementation of CNAM teleservices (fixed by December 31, 2018 at the latest), the possibility of using the INS even before the publication of the reference system as well as the formality of notification to the which professionals and establishments should, in this case, proceed with the Commission. The Commission points out that no notification relating to the use of the

NIR as an INS has so far reached it. The Commission points out that the use of the INS can only take place, in practice, if the technical conditions of use in terms of security and the global architecture of the teleservice, are specified by the forthcoming reference system. It also adds that access to a reliable INS is, to date, made impossible insofar as the CNAM's teleservices are not yet in service. Under these conditions, the Commission considers that the adjustments to which the project makes in terms of timetable and formalities, are adapted. of the Commission. The President Marie-Laure DENIS