

# client alert

DATA PROTECTION & INSURANCE | TURKEY |

NOVEMBER 2016

## REGULATION ON PROCESSING PERSONAL HEALTH DATA AND ENSURING DATA PRIVACY

The Regulation on Processing Personal Health Data and Ensuring Data Privacy was published in the Official Gazette on 20 October 2016 (the "**Health Data Regulation**").

The provisions of this Health Data Regulation apply to:

- health service providers;
- persons whose health data is being processed;
- IT system and archiving service providers of the above-mentioned health service providers;
- persons, entities and administrative bodies processing health data under the scope of another legislation, such as insurance companies providing life or health insurance policies, SAGMER (*Information and Surveillance Centre on Health Insurances*) and HAYMER (*Information and Surveillance Centre on Life Insurances*).

### GENERAL PRINCIPLES

The Health Data Regulation was issued in line with the provisions of Law No. 6698 on the Protection of Personal Data ("**Law No. 6698**") and provides, in addition to the Personal Data Protection Board (recently created under Law No. 6698), that the Ministry of Health and the Personal Health Data Commission of the Ministry of Health shall also be in charge of monitoring the proper implementation of the Health Data Regulation.

In accordance with Law No. 6698, all processed data must be lawful, compatible with good faith, up-to-date and correct, obtained on specific, express and legal grounds, limited and kept only for a required time period. All persons and entities processing health data of third persons are subject to an obligation of confidentiality.

### PROCESSING PERSONAL HEALTH DATA FOR INSURANCE COMPANIES

The Health Data Regulation sets out several obligations for the processing of personal health data, including in particular provisions governing the processing of health data by insurance companies.

Whereas the provisions of the Health Data Regulation require in principle the express consent of the data owner for the processing of such data without anonymization, a specific exemption was granted for the *financing of health services*, which includes insurance coverage for life and health (through the Social Security Institution and insurance companies).

According to the provisions of the Health Data Regulation, insurance companies are allowed to obtain personal health data to issue insurance policies, subject to compliance with the following requirements:

- health data must be strictly limited to the information necessary for the issuance of policies and the determination of risks to be subject to a premium;
- health data must be obtained in compliance with the legislation;
- health data must be kept in compliance with confidentiality and security requirements.

**All other irrelevant health data** can only be processed with the express consent of the data owner in this respect, and must be deleted or anonymized if the data owner's consent is revoked. Such revocation must be deemed as prospective and would therefore not affect previous transactions (performed with the express consent of the relevant data owner).

Where potential violation of the legislation regarding personal health data is suspected, data controllers and relevant officers (persons authorised by data controllers for the performance of related data transactions) must notify the Ministry of Health.

## TRANSFER OF PERSONAL HEALTH DATA

The Health Data Regulation provides that any transfer of health data outside Turkey (e.g. if required for transfer of the risk to third persons or IT hosting, etc.) is subject to the assessment of the Personal Health Data Commission of the Ministry of Health.

In any event, data controllers and officers must take all necessary precautions determined by the Ministry of Health to prevent illegal processing of and unlawful access to such data, and must protect it from potential risks of loss. Data controllers and officers shall remain subject to their confidentiality obligation even after the term of their duty.

According to the provisions of Law No. 6698 and the Health Data Regulation, data processing may be outsourced, on the condition that the original controller of the data shall remain jointly responsible for all unlawful acts of the outsourcing services provider.

## SANCTIONS

The sanction provisions of Law No. 6698 apply to all crimes and misdemeanours on personal health data under this Health Data Regulation.

The provisions of the Health Data Regulation are effective as from the date of its publication, i.e. 20 October 2016.

*In compliance with Turkish bar regulations, opinions relating to Turkish law matters which are included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.*

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