



**Why we are not equal in rights to health protection?**

## **Analysis and recommendations**

Funded by:



Open Society Fund  
Bosnia & Herzegovina



Fond otvoreno društvo  
Bosna i Hercegovina

November 2010

**RIGHTS FOR ALL**  
Make Human Rights Real



**Why are we not equal in rights to health protection?  
Analysis and recommendations**

**Project financed by:**



**European Union**

Open  
Society Fund  
Bosnia & Herzegovina



Fond  
otvoreno društvo  
Bosna i Hercegovina

**November 2010.**

# **Why are we not equal in rights to health protection? Analysis and recommendations**

**Project implement by:  
Initiative and civil action (ICVA)**

**in cooperation with:  
Prava za sve BiH  
and**

Civil society organizations in BiH (in alphabetical order):

Bureau for human rights, Tuzla; Bolja budućnost, Tuzla; Caritas BK BiH; Red Cross of the Tuzla Canton; Helsinki Committee for Human Rights BiH, Sarajevo; Coordinating Board of Organizations of the Disabled of the Republika Srpska, Banja Luka; Sumero, Sarajevo; Udružene žene, Banjaluka; Vive Women, Tuzla; Zdravo da ste, Banja Luka; Zemlja djece, Tuzla; Žena BiH, Mostar

Production of this publication was financed by:

European Union  
Open Society Fund BiH

*This publication was made with assistance of the European Union. Contents of this publication are exclusive responsibility of the ICVA and do not necessarily reflect positions of the European Union.*

# Content

<b>1.</b>	<b>Introduction – situation overview</b>	<b>1</b>
<b>2.</b>	<b>Legislation</b>	<b>3</b>
	▪ Law on Health Insurance of FBiH and Law Amending the Law on Health Insurance of FBiH	
	▪ Law on health care in FBiH	
	▪ Decision on establishing the basic package of health rights in FBiH	
	▪ Decision on maximum amounts of direct participation of the insured in costs of specific forms of health care in the basic package of health rights (Decision on Participation)	
	▪ Law on Health Insurance of RS	
	▪ Rulebook on methods of using health care and Rulebook on content and scope of the rights to health care and participation	
	▪ Law on health care of RS	
	▪ Law on rights, obligations and responsibilities of patients in FBiH	
<b>3.</b>	<b>Exercising the right to health care</b>	<b>9</b>
	<b>3.a. Who is excluded from the health care system</b>	
	Republika Srpska	
	Federation of BiH	
	<b>3. b. Practice in law implementation</b>	<b>12</b>
	▪ Law amending the Law on Health Insurance of FBiH	
	▪ Decision on maximum amounts of direct participation of the insured persons in using specific forms of health care in the basic package of health rights of FBiH (Decision on participation)	
	▪ Rulebook on the method of using health care of RS and the Rulebook on content and scope of rights to health care and participation in RS	
	▪ Law on rights, obligations and responsibilities of patients in FBiH	
	▪ Decision on accepting the list of essential drugs in medicine in FBiH	
<b>4.</b>	<b>Discrimination in provision of health care</b>	<b>17</b>
<b>5.</b>	<b>Information on rights to health care</b>	<b>18</b>
<b>6.</b>	<b>Conclusions, challenges, recommendations</b>	<b>19</b>
<b>7.</b>	<b>Annex</b>	<b>21</b>
	Table 1. Overview of insurees and insured persons in FBiH	
	Table 2. Allocations for prescription drugs in 2006 by cantons	



## **1. Introduction – situation overview**

BiH has 13 ministries of health, 13 health funds and numerous institutes. In the Federation of BiH, each canton has its own Ministry of Health and Health Fund, and there is also the Ministry of Health at the entity level as well as Health solidarity fund. Republika Srpska has its Ministry of Health and Health Insurance Fund, and they cover the whole territory of RS. Brčko District has had its own health fund from 2002.

The role of the Federation Ministry of Health is to act as policy and law maker in this field, on the basis of consensus achieved by the cantons, while cantons have the role of implementing agencies for the established policies and laws, and they are also majority financier of implementation of all policies, laws and institutional work. At the same time, the Federation is deprived of any mechanisms to control lower levels of authorities in terms of monitoring implementation of established policies, what often leads to discrepancies between cantonal health regulations and Federation legislation, which in some cases provide for completely opposite solutions for the same issues. Furthermore, at the level of cantons, cantonal policies and ministerial or assembly decisions are implemented that are not harmonized or are contrary to the Federation laws.

This fragmented and decentralized health care, without clear managerial and accountability system leads to hindered and discriminatory access to health services for all citizens. Individuals insured in different entities and cantons have different rights and different levels of access to health care services. Health care services are not at all transferrable between the entities, and are transferrable only to a limited extent between cantons in FBiH.

In addition, the health care benefits are unevenly distributed, being better in cities and more difficult to access to for rural population that lives in areas that are not connected with public transport, affecting mostly elderly and sick people.

Health care for people with disabilities is characterized by discrimination by cause of disability and different scope of health care is provided for persons with disabilities acquired during the war and irrespective of war. For people with disabilities, the access to health institutions is not universally resolved (out-patient offices, health centers) partly because of physical inaccessibility, partly due to lack of equipment necessary to accommodate the needs of persons with disabilities.

Citizens are generally insufficiently informed of their rights; they rarely seek protection of their rights before courts and other responsible institutions, which then continue to violate the rights of a huge number of citizens, unhindered and without consequences. Provision of

*Why are we not equal in rights to health protection? Analysis and recommendations*

information by institutions is not regulated by law. Public institutions not-so-rarely deliberately omit to provide information on health care rights and thus influence the number of the health insured people and people who seek their rights in health institutions or before the courts.

## **2. Legislation**

The existing laws in the field of health care and insurance regulate health care and insurance at entity level. There is no activity at the state level that would be aimed at harmonizing entity laws or ensuring even access to health care for all citizens. At the entity level, harmonization of laws and regulations with the international health care standards has begun through adoption of new laws (Law on Health Care in FBiH, Law on Rights, Obligations and Responsibilities of Patients in FBiH and RS, *Law on Health Care of FBiH is under preparation*), however, these changes are slow, and their implementation in practice is a whole separate problem.

The law currently in force is the **Law on health Insurance of FBiH<sup>1</sup>**, but a new law is under preparation, and there are also a number of requests on the table to amend the existing law. Implementation of the **Law on amendments to the Law on Health Insurance of FBiH<sup>2</sup>** started on January 1, 2009, and the cantonal administrative authorities, cantonal health insurance funds and cantonal governments were under obligation to harmonize their acts with this Law within 90 days. The Law introduced changes that provide for direct health care for children and young people under 18, and up to 26 if they are regular students, as well as of the elderly people above 65 years of age if they are not insured on some other grounds. Thus amended Law on Health Insurance in FBiH would give legal right to insurance to a large percentage of children and young people (estimated at around 300,000 persons under the age of 26 having no health insurance in FBiH).

**Law on health care of FBiH<sup>3</sup>** entered force in August 2010, providing the deadlines of three to six months for adoption of implementing regulations and harmonizing the acts of health institutions with the Law from adoption of the Law (those deadlines are to expire in November 2010/January 2011); during the transitional period, the applicable provisions of the Law on Health Care from 1997 will be in force.

The Law says:

- *Municipal mayor, cantonal ministers and the Federation minister shall appoint the health councils within six months from the date of entry into force of this Law;*
- *Implementing regulations shall be adopted within three months from the date of entry into force of this Law;*

---

<sup>1</sup> Official Gazette FBiH 30/97, 7/02, 70/08

<sup>2</sup> Official Gazette FBiH 70/08

<sup>3</sup> Official Gazette FBiH 46/2010

*Why are we not equal in rights to health protection? Analysis and recommendations*

- *Health institutions shall harmonize their general acts and operations with provisions of this Law and regulations adopted on the basis of this law within nine months from the day of entry into force of this Law, and also appoint the commission defined under Article 61 of this Law.*

At the stage of adoption of this Law, a positive step forward was performed by the Health Commission of the Parliament of the Federation BiH, and public debates have been organized on the draft law to which the non-governmental organizations also provided their comments. However, what was not so good was that none of the comments provided by NGOs were included in the final text of the law. The comments concerned the following:

- expansion of health care measures to include the measure: “informing population on exercising the right to health care and health“;
- expansion of conditions a health institution has to comply with in order to be able to provide health care services to include the following: “that they are physically accessible and adjusted to the needs of people with disabilities, in accordance with the Decree on Spatial Standards, Urban-Technical Conditions and Norms for Preventing Barriers for People with Disabilities“;
- harmonization of the liabilities with the adopted Law amending the Law on Health Insurance of FBiH that included the categories that had been excluded until then – children from birth to age of 15, who had no right to health insurance on different basis;
- determining deadlines and defining obligations of the cantons with regards to harmonization of the cantonal legislation with the Federation law;
- prescribing sanctions/penalties for cantonal ministries (ministers) who fail to ensure harmonization of cantonal legislation with the Federation law within time specified by Law.

**Decision on establishing the basic health care package in FBiH<sup>4</sup>** entered force on April 1, 2009. The basic package defines the necessary level of health services that would be provided under the same conditions to all insurees in FBiH. The basic package guarantees to insurees the right to medicines from essential lists, which must be the same in all cantons. A package of health care rights for the uninsured persons has been defined. It includes the rights of children up to 18 years of age and students up to 26 years of age that are equal to the rights of the insured persons. The package of rights for the uninsured persons above 18 years of age includes the following:

- emergency medical aid in life threatening situations;

---

<sup>4</sup> Official Gazette FBiH 21/09

- treatment of serious contagious diseases;
- health care during pregnancy and childbirth;
- health care for mental patients who represent a threat to their own life or lives of others;
- health care in cases of specific chronic diseases;
- health care to the persons suffering from progressive neuro-muscular diseases, cerebral paralysis, multiple sclerosis, paraplegia and quadriplegia, epilepsy;
- health services provided with the purpose of organ donation for transplantation and health services related to donation of blood.

**Decision on maximal amounts of direct participation of insured persons in costs of use of different forms of health care in basic package of health rights<sup>5</sup> (Decision on participation)** entered force on April 1, 2009.

According to the Decision, the following individuals are exempted from paying participation:

- children up to 15 years of age, pupils and regular students up to the age of 26,
- women using pregnancy- and motherhood-related services,
- military disabled and civilian war victims with more than 60% disability,
- family members of the killed soldiers who had been members of Military of the Federation of BiH;
- pensioners whose pension does not exceed the amount of minimum pension;
- individuals above 65 years if they do not have pension or other income;
- insured individuals – protégées of social institutions or social protection beneficiaries;
- displaced persons and refugees, unless they have pension or other income;
- insurees who have donated blood more than 10 times, organ donors;
- insurees registered with the employment institute as the unemployed.

These decisions generally harmonize health care at the level of FBiH and mitigate the discrimination on territorial basis. For example, the provision of care for childbirth that had been charged differently/not charged at all in different cantons before the Decision on participation was adopted, should be exempted from participation in all cantons.

Of course, it was necessary that all responsible health care and health insurance authorities, as well as health institutions, harmonize their respective regulations and acts with the provisions of the Decision on Package of Health Rights within 120 days from the day of entry into force of this Decision (by July 1, 2009). Cantons were also obliged to harmonize cantonal decisions on participation and positive lists of drugs of the cantons with the Federation Decision on Participation within 60 days (by May 1, 2009), and this has not happened.

---

<sup>5</sup> Official Gazette FBiH 21/09

**The Law on Health Insurance of RS<sup>6</sup>, Rulebook on methods of exercising health care rights<sup>7</sup> and Rulebook on content and scope of rights to health care and participation<sup>8</sup> in the Republika Srpska**, similarly as in the Federation, includes children up to 15 years and persons above 65 years as beneficiaries of compulsory health insurance (the rulebooks entered force in 2007).

### **Law on health care of RS<sup>9</sup>**

Law on health care of RS is based on the principle of equality, exclusively based on medical indications. Founders of health institutions in RS may be the entity, city, municipality or other physical or legal persons, while the plan of health institutions is adopted by the Government of RS on the basis of Health Care Development Strategy for a specific period. Differently from the Federation, the RS Law recognizes the necessity of multi-sectoral cooperation in local community through establishment of “health committees” with members elected from among the ranks of citizens and other interested organizations such as educational and social institutions, companies, expert and humanitarian organizations. Director is responsible for supervising the professional work of health workers and institutions, as is the minister when it is about the external supervision of the professional work. Health inspection supervises implementation of law. The law sets deadlines and obligations that concern the Government of RS, minister and ministry of health, upon entry of this Law into force.

**Law on rights, obligations and responsibilities of FBiH<sup>10</sup>** entered force on July 22, 2010. Public debates were not organized by the authorities in the process of adoption of the Law, and the general public has not been familiar with the Draft Law, and later not even with the fact that the Law was adopted. As stated in the basic provision, the purpose of the Law is:

*„to provide equal, appropriate, continual, quality and safe health care to patients in FBiH that is based on partnership between patients and health care provider... Partnership is based on mutual trust and respect between the patient and health institution, private practice or health worker or health associate, at all levels of health care, and rights and obligations and responsibilities of partners in such a relationship.”*

The Law specifically stipulates the patients’ right to information:

*„Each patient is entitled to all kinds of information on their health, their rights and obligations and methods of using them. Each patient has the right to information on*

---

<sup>6</sup> Official Gazette RS 18/99, 51/01, 51/03

<sup>7</sup> Official Gazette RS 54/07, 63/08

<sup>8</sup> Official Gazette RS 54/07, 63/08

<sup>9</sup> Official Gazette RS 18/99, 62/02

<sup>10</sup> Official Gazette FBiH 40/10

## *Why are we not equal in rights to health protection? Analysis and recommendations*

*health services that may be provided to them in the health institution or private practice... Information that have to be provided to the patients by health institutions and health workers include:*

*a) general information concerning the health institution, as follows: patients' guide through the health institution and house rules, contact phones, legal rights and obligations of the patients and other information specified in the general act of the health institution.*

*b) specific information concerning: patient's right to object the actions of the health workers and health associates with respect to safety and quality of health services, as well as the procedures and deadlines for expressing this objection, information on surveying patients in connection with their satisfaction with health services and on other measures within the quality improvement system in health institution, information on implementing teaching and medical research and options to accept or refuse participation in teaching process or medical research.*

*c) specific personal information: information on name and surname, titles of the health workers and health associates, information on the various treatment aspects, information on waiting lists for different health services, health promotion and disease prevention information, and **information on rights under health insurance and procedures for exercising such rights.**“*

Main objections provided by the non-governmental organizations with respect to the Law on Patients' Right of FBiH concern the following:

1. Establishing the obligation to provide information to the patients. We are of the opinion that the statement that “health institutions and health workers shall provide information to the patients” is too general and lacking precision because the Law does not oblige any specific individual (for example, the director) or a body in the health institution to establish a mechanism or deadlines for provision of information stipulated by law, although it does provide for penalties for institutions failing to provide such information. Also, the obligation of municipal council, which is established by law, is unrealistic in providing, among other things, that they organize courses for citizens on patients' rights, and especially to “give recommendations for organizing courses in health institutions for the purpose of familiarizing the management and health workers with the patients' rights concept, legislation and necessary appropriate changes in health institutions”, because it goes without saying that the management and health workers should be the first to learn about provisions of this Law, and their level of knowledge of the provisions in the Law should not depend on a course that may or may not be organized by a municipal council.
2. Impartiality of work of patients' complaint commission is not secured in the health institutions as they are appointed by the director of the health institution from the ranks of people working in health institution against which the patients had filed complaints, and the director of the institution is the one who resolves or does not resolve the patients' objections upon receiving commission report on complaints.

3. Not even the second instance commission, the municipal health council, has responsibility to decide on complaints; instead, it has more of administrative and advisory character (gathers reports on complaints filed and statistically processes the number of complaints/objections) and in the best case scenario, provides suggestions on how to improve situation. Also, it is foreseen that the municipal health council takes reports of the health institutions into consideration every six months, what is a too slow mechanism to respond to the observed problems.

It was left to the health institutions treating the patients to monitor the complaints of their patients, without securing impartiality. Obligations of the commissions established in health institutions and councils in municipalities and ministries come down to analysis and processing statistical data on patients' complaints, and do not include resolving complaints and activities that lead to remedying the causes of complaints. Slovenia, for example, has an Ombudsperson for health care responsible for complaints based on the Law on Patients' rights and thus ensures impartiality in decision making and action taking.

The legal solutions proposed as above will not provide essential contribution to meeting the purpose of the Law, at least in the part concerning the patients' rights in the Federation. Unfortunately, this will be one more in a series of laws that will lack full implementation, partly also due to some illogical legislative solutions the non-governmental organizations had already pointed at.

### **3. Exercising the right to health care**

#### **3.a. Who are the ones excluded from the health care system**

Specific social groups are not covered with health insurance. The most numerous group includes the unemployed who are not registered as unemployed, or those who have missed the deadlines to get registered with the employment institutes, as well as those who are employed, but their contributions are not paid regularly by their employers (workers on waiting lists, workers in newly privatized companies or companies under bankruptcy). There are also members of Roma minority who are excluded from the system partly due to non-possession of personal identification documents (birth certificates, ID cards), and partly due to high percentage of unemployment among them. Also, a large number of citizens, including children, remain uncovered due to lack of knowledge among parents and children on the rights they are entitled to under the scope of health care, and methods of exercising such rights.

#### **Republika Srpska**

According to the data provided by the Health Insurance Fund of RS, in year 2009 28.6% or 410.482 persons were not able to get a stamp in their health booklets and use the health insurance rights. Compared to 2008, the number of insured people went up by 61.958.<sup>11</sup>

According to the data provided by the Health Insurance Fund of the Republika Srpska, most of the uninsured are employees of companies that are not paying health insurance contributions. As a rule, for all citizens (except for the employees for whom their employers are not paying the contributions) some grounds may be found to have them registered with health insurance (the unemployed are registered and contributions for them are paid by the Employment Institute, for the pensioners by the Pension Fund, for displaced persons and refugees by the responsible Ministries, for persons receiving social benefits centers for social work, while the farmers pay their contributions themselves). Stamping the health booklet is conditioned by paid contributions, except for three categories of population where there is a 100% coverage by compulsory health insurance, and whose health booklet are stamped irrespective of whether the contributions had actually been paid: children up to 15 years, persons over 65 years of age, pregnant women and mothers of children up to one year old.

---

<sup>11</sup> It is important to mention that in previous reports (data for 2008) the Health Insurance Fund of RS used the number of people registered with family medicine teams (1,221,899) as estimated population, what resulted with the estimated 19.18% of uninsured population. Increased number in RS estimates for 2009 lead to a drastic increase in share of the uninsured (28.6%), although the number of insurees had increased by 61.000 people compared to 2008.

## **Ratio between health insured and uninsured persons in the Republika Srpska<sup>12</sup>**

<b>Year</b>	<b>Estimated population</b>	<b>Number of insurees for whom contributions have been paid</b>	<b>Percentage of uninsured population</b>
2008.	1.436.000 <i>1.221.899*</i>	963.552	32,9 % <i>19,18 %*</i>
2009.	1.436.000 <i>1.221.899*</i>	1.025.518	28,6 % <i>16,07 %*</i>

*\* data used in estimates for 2008*

Large percentage of uninsured population, most of them being the employees whose employers are not paying the contributions mandated by law, indicates the need to strengthen the work of inspection, providing for more regular controls and imposing harsher penalties on the employers found in breach of the law. The Law on Labor of RS<sup>13</sup> obliges the employer to register their employees with health, pension-disability and unemployment insurance and serve to their workers a certified copy of the registration within 8 days from the day of establishing the working relationship. The law provides for fines ranging between 2,000 and 15,000 KM for employers who fail to register their employees with insurance.

### **Federation BiH**

According to the data provided by the Health Insurance and Reinsurance Institute of FBiH, there were 14.92% of people excluded from the health insurance system (around 349.000 people). Compared to the year before, there has been a reduction in the number of the uninsured individuals by approximately 28.000 persons or 1.1%.

While a slight increase in the number of insured persons has been seen in most cantons of FBiH, this number went down by 1.5% (1.042) in Posavina Canton, and 0.43% (1.927) in Zenica-Doboj Canton.

---

<sup>12</sup> Data provided by Health Insurance Fund of RS

<sup>13</sup> Official Gazette RS 55/07

**Population covered by health insurance in Federation of BiH<sup>14</sup>**

CANTON	POPULATION		NUMBER OF INSUREES		HEALTH INSURANCE COVERAGE	
	2008.	2009.	2008.	2009.	2008.	2009.
Unsko-sanski	287.998	288.114	206.444	208.749	71,68	72,45
Posavski	40.513	39.886	28.506	27.464	70,36	68,86
Tuzlanski	497.813	498.549	442.758	447.265	88,94	89,71
Zeničko-dobojski	400.848	400.602	343.046	341.119	85,58	85,15
Bosansko-podrinjski	33.225	33.093	25.856	25.800	77,82	77,96
Srednjo-bosanski	255.648	254.992	201.535	212.436	78,83	83,31
Hercegovačko - neretvanski	226.632	225.930	184.867	186.238	81,57	82,43
Zapadno-hercegovački	81.833	81.707	68.659	71.720	83,90	87,78
Sarajevski	421.289	423.645	399.419	406.006	94,81	95,84
Canton 10/Livno	81.396	80.800	53.368	53.237	65,57	65,89
<b>Total</b>	<b>2.327.195</b>	<b>2.327.318</b>	<b>1.954.458</b>	<b>1.980.034</b>	<b>83,98</b>	<b>85,08</b>

Special protection measures for specific groups of people: pregnant women/mothers/babies, children/adolescents, elderly people, vulnerable groups, such as the homeless, drug addicts, unemployed, do exist in a certain measure, but more under social welfare scheme. Such measures are in most cases insufficient. However, the matter of concern is that there are no special health care measures for large part of population in social need who are left uncovered by the universal health care.

<sup>14</sup> Data provided by Health Insurance Fund of FBiH

### **3.b. Practice in implementation of laws**

#### **1. Practice in implementation of the Law on Amending the Law on Health Insurance in FBiH**

Laws adopted at the Federation level are not implemented by the cantons, so the citizens do not exercise the rights that are guaranteed to them under the Federation law. For example, Law Amending the Law on Health Insurance of FBiH that provides for direct health protection of people over 65 and children from birth to 15 years of age is not implemented in all cantons because the cantons have not allocated budgets for that purpose. Even in cases that cantons did allocate the budget, sometimes the cantonal ministries failed to adopt the necessary implementing regulations needed to actually implement the law in practice.

For example, the responsible Ministry for Labor and Social Policy of Tuzla Canton has not implemented the Law in 2009 because they had not adopted the necessary implementing regulations and ensured funds for health insurance of the uninsured individuals. In 2010, 450,000 KM has been allocated from the budget of Tuzla Canton for health insurance of the uninsured individuals, but until August 2010, the Ministry had not yet adopted the required Instructions on method of exercising this right. Requests for exercising the right to health insurance of 55 children, beneficiaries of the “Zemlja djece” have been refused with explanation that the Instructions for implementation of legislation were missing. When asked by the Institution of ombudsmen for human rights of BiH, in cooperation with NGO “Zemlja djece” as to why the Law was not being implemented in the Tuzla Canton, the line minister confirmed that the funds for its implementation had existed, but the law was not implemented because the “Collegiate of the Government of the Tuzla Canton took the position that the possibilities for refuting provisions of the Federation Law on Health Insurance should be looked into because the law imposes financial obligations onto the cantons without having them consulted prior the to that”.

So, the position of a Collegiate of Government was suddenly above the law, it prevented implementation of the Law and deprived the beneficiaries of their rights, what was not how things should have been if there had been rule of law. Only when the NGO “Zemlja djece” had pressed criminal charges and raised publicity in the media, did the Minister adopt the Instruction for implementation of the Law in the Tuzla Canton using the summary proceedings.

Unfortunately, although the NGOs keep pointing at the unfair provision and requesting changes to the Law and abolition of the provision stipulating the deadline of 30 to 90 days after termination of working relationship or completion of schooling for registration with the Employment Institute, that provision is not being changed. People miss the deadline to register with employment institutes for various reasons, and around 43% of the unemployed

who are registered with the employment institutes in FBiH do not have the right to health insurance. All those unemployed people, together with their family members, have no other way to exercise their right to health care. At the same time, there is no such deadline in the Republika Srpska, and all unemployed people registered with the employment institutes have the health insurance and are entitled to health care.

Of 354,500 registered unemployed people in FBiH in December 2009, only 201,760 (57%) of the unemployed have exercised their right to health care through the employment institutes.<sup>15</sup>

In Republika Srpska, of 145,400 registered unemployed in 2009, 120,420 (83%) have exercised the right to health insurance<sup>16</sup>.

## **2. Practice in implementation of the Decision on maximum amounts of direct participation of insured persons in covering costs of various kinds of health care from the basic package of health rights<sup>17</sup> (Decision on participation) of FBiH**

Cantons were obliged to harmonize all cantonal decisions on participation and positive lists of medicines within 60 days (by May 1, 2009) with the Federation Decision on Participation, but not all cantons have done that.

Some cantons continue to require payment of participation in costs of health services by insurees who are not exempted from this obligation (in form of annual stamps). Participation is paid in the following cantons: Una-Sana (16 KM), Tuzla (16 KM), Central Bosnia (25 KM), Herzegovina-Neretva (20 KM), West Herzegovina (20 KM); Livno (30 KM), and it is not paid in the following cantons: Posavina, Zenica-Doboj, Bosansko Podrinje, Sarajevo.

Equally, ill persons have different rights in different cantons. Quantities of medicines they receive on prescription depend on the funds available in budgets of different cantons. For example, in Central Bosnia canton, injection is not charged, but the service of injecting is; in Sarajevo, diabetics receive insulin, needles and alcohol for free, while in Mostar they get only insulin; in Tuzla, a special commission is formed in Tuzla Canton to consider specialist referrals for more expensive tests (CAT scan, MR) thus further reducing the number of citizens to whom such tests are made available, or in a better case, their tests are delayed; in Mostar, women with carcinoma have only partial rights. Operating an “info-counter” in the health center Tuzla, the Red Cross of the Tuzla Canton found that in 2010, many patients were deprived of the possibility of getting medicines from the essential list because the Health Center has a limit set by the Health Insurance Fund on the amount they can “spend”

---

<sup>15</sup> Federation Employment Institute, Bulletin, December 2009

<sup>16</sup> Employment Institute of RS, Work Report for 2009.

<sup>17</sup> Official Gazette FBiH 21/09

on medicines, and that limit is 6 prescriptions per year per insuree, what amounts to 66.00 KM. The marginalized groups of citizens are mostly affected by this, and this also encourages corruption in the health institution.

There is also the issue the officials in the health insurance institutes not knowing about the methods of getting exemption from participation for the voluntary blood donors who are exempted by law. Sometimes, the counter clerks stamping the health booklets send back voluntary blood donors without providing them with information on the process of certifying the exemption from payment of the participation.

### **3. Practice in implementation of Rulebook on the Methods of Exercising Using Health Care in RS<sup>18</sup> and the Rulebook on content and scope of right to health protection and participation in RS<sup>19</sup>**

The Republika Srpska Rulebooks entered force in 2007, and similarly as in the Federation, they added the children up to 15 years of age and persons older than 65 to the list of those who have compulsory health insurance. Information provided by non-governmental organizations suggest that the principle of non-payment of participation in health care costs for children up to 15 years and the elderly over 65 years is implemented without problems.

### **4. Practice in implementation of the Law on Rights, Obligations and Responsibilities of Patients in FBiH<sup>20</sup>**

This Law entered force on July 22, 2010. No public debates were organized in the process of adoption of the law by authorities, and the general public were not familiar with the Draft Law, and later, they were not informed on the fact that the Law had been adopted.

In late July 2010, the Red Cross of the Tuzla Canton opened two information counters for patients in Health Center Tuzla and in the hospital Abdulah Nakaš in Sarajevo. Three months of their work, which is continuing, showed that the patients were seeking and receiving information (for example on work of the health institution services and possibilities of getting the medicines from the essential lists), and at the same time, the health workers were exposed to monitoring of their work with patients by patients themselves. It also showed that the patients are generally very little informed on laws, procedures, possibilities provided by health institutions, as well as on the Law on Rights of Patients that protects their rights.

---

<sup>18</sup> Official Gazette RS 54/07, 63/08

<sup>19</sup> Official Gazette RS 54/07, 63/08

<sup>20</sup> Official Gazette FBiH 40/10

According to the Law on Inspections, the Federation Inspection Administration is responsible for resolving patients' complaints, although the Law on Rights of Patients provides for other instruments described in the chapter "laws". This particular instrument is rarely used by the patients, so for example only five complaints were filed with the Federation Inspection concerning the Health Center Tuzla in 2009.

Another research conducted by Red Cross of the Tuzla Canton among non-governmental organizations whose target groups include individuals suffering from various diseases showed the necessity of achieving homogenization and harmonization in the way these organizations worked with the aim of exercising the patients' rights. The necessity of establishing a single association at the state level that would work to protect the patients' rights irrespective of the kind of diseases and continually monitor and evaluate implementation of the Law on Patients' Rights became apparent.

#### **5. Practice in implementation of the Decision on Accepting the List of Essential Medicines in FBiH**

Even today, 10 years after adoption of the Decision on Accepting the List of Essential Drugs in Medicine, most cantons have not yet adopted the complete list of drugs that is prescribed for the FBiH level, and as a result, in some cantons patients have to pay for certain drugs that are free in other cantons. The Bureau of Human Rights Tuzla conducted a research in 2009 to establish some of the reasons leading to discrimination of citizens in exercising their rights to free drugs from the essential drugs list, and those are: cantons pay different percentages for purchase of drugs from the essential list irrespective of the economic situation in the canton, cantons issue independent tenders for procurement of drugs that may have different prices, and the tender issuing procedure may last and cost differently in different cantons.

Illustrative is the example of Herzegovina-Neretva canton (Table 2 of the Annex), which allocates the smallest percentage of the health insurance revenues for drugs (6.35%) although the total revenues of health insurance per capita are higher than the average in FBiH. One of the reasons for that is existence of two cantonal hospitals and "double" health institutions with ethnic prefix, where significant costs of their maintenance do not leave enough funds to procure medicines from essential list.

The Bureau of Human Rights Tuzla proposed in their campaign "Disease is not picky about cantons" amendments to the Law on Health Insurance in FBiH according to which a joint fund for procurement of medicines from the list of essential drugs would be established at the level of FBiH (it was proposed to be established within the Health Insurance and Reinsurance Institute of FBiH) that would be filled through cantonal health insurance funds, while the level of allocation would be determined by decision of cantonal governments. Therefore, the money the cantons have planned in their budget for procurement of funds would be rerouted to this Federation fund from which, in the beginning, only the drugs that are on current

cantonal lists would be purchased, and after the first procurement, the savings would be used to expand such lists. Issuing a single tender for procurement of medicines at the level of FBiH would save significant time and money that could be used to procure more medicines and to expand essential lists of drugs, and to even out the availability of medicines for citizens of the Federation of BiH.

The request for amending the Law on Health Insurance was adopted by the House of Representatives of the Parliament of FBiH in July 2010 and it is in Parliamentary procedure at the time of publication of this report (November 2010).

In the Republika Srpska, the Government determines the essential list of medicines, while the entity Health Insurance Institute pays for issuing the medicines to citizens who have health insurance.

## **4. Discrimination in health care**

Because of all the above said, health care in BiH is characterized by discrimination of health care beneficiaries on territorial grounds (entities/cantons, urban/rural communities), but also by the scope of protection within specifically vulnerable groups (persons with disabilities, members of Roma minority, women, children). The discrimination is reflected in different legislative solutions and their implementation at various levels of government:

- Provisions of the laws on health insurance at the entity level are different, providing to all unemployed persons in RS health insurance and care once they are registered with the Employment Institute, while in FBiH some restrictive provisions are in place concerning the deadline for registration with the institutes, resulting with significantly lower number of health insured among the unemployed.
- The essential drugs lists are different in different cantons in the Federation and between the entities – the same drugs are not equally available to all citizens.
- For some citizens health care is more expensive than for others – the Decision on Participation is differently implemented in different cantons, so in some cantons, some groups of citizens are exempted from paying the participation while they are not so in others, in some cantons some health services are additionally charged for (in varying amounts), in others they are not.
- Health care of persons with disabilities is characterized with discrimination on the grounds of cause of disability, and the scope of rights of persons who became disabled in war differs from the one of those whose disability is not connected to war events. The people with disabilities are not universally provided with access to health institutions, particularly when it comes to out-patient offices, health centers, etc. primarily because of physical barriers – there are no lower counters for persons in wheelchairs, sound signals for the blind persons, equipment for gynecological examination of women in wheelchairs is rarely available, etc. Also, the level of training of medical and paramedical staff in provision of assistance with persons with disabilities is not satisfactory.
- There is a different level of availability of specialist examinations in different cantons. Women are exposed to additional risks since there are long waiting lists for specific examinations of women (PAP smear, mammography), and in some cases, women have to wait for year and a half to do the test. The agreement between the Health Insurance Institute and a number of private practices in some cantons in FBiH, which entered force on October 1, 2010, should lead to shorter waiting time for various types of specialist examinations/tests.

## **5. Information on health care rights**

A percentage of people (17-28%)<sup>21</sup> do not exercise their health care rights, majority of them belonging to vulnerable groups. This is partly caused by insufficient, inadequate and unavailable information provided by relevant institutions. Many people miss the deadline to get registered with the employment institute after termination of their working relationship or education simply because they are not aware that there is a deadline, and thus they lose the right to health insurance. Parents of children who were deprived of the right to direct health care by the amendments to the law do not know of the legislative changes and they are not using and not seeking their rights. The schools are not providing information to children/parents on their health care rights. The situation with parents of children using orthopedic aids is similar – they often do not know that their children have the right to an orthopedic aid and they do not know where and how to seek it. Roma women exercise their right to health care during pregnancy and one year after childbirth only partially because they do not know that they are entitled to it even when they are not health insured.

The institutions' obligation to provide information is not adequately regulated by law and the institutions deliberately avoid the minimal obligation to provide information to citizens, and they often prevent that certain information on rights are available in health institutions. For example, the clinical center in Tuzla did not allow putting information materials on children's rights to health care on their information counter (made by non-governmental organization).

The public is not sufficiently informed of the process of adopting and amending the law. Media do not provide sufficient coverage and information on laws in the area of health care that are in the adoption procedure before parliaments, and the authorities do not put any effort in explaining the new laws to citizens and telling them about their rights. The Law on Health Care has been through the public debate, the Health Care Commission of the Parliament of FBiH organized a number of public debates in October/November 2009 in major towns and presented the draft law to stakeholder groups, mostly health professionals and a small number of interested non-governmental organizations. The downside was that none of the comments provided by the non-governmental organizations concerning the draft law was adopted in the final version of the law.

---

<sup>21</sup> Tables on pages 10 and 11 of this report

## **6. Conclusions, challenges, recommendations**

It is necessary that the ministries responsible for health, in cooperation with other authorities in the country, work on adoption of measures that would lead to harmonization of laws at entity and cantonal levels, thus diminishing the existing discrimination in exercising the rights to health care on territorial basis and provide even exercising of rights for all citizens. With that aim, it is necessary to ensure consistent implementation of adopted laws through adoption of monitoring mechanisms through introduction and implementation of institutional accountability.

The biggest challenge in implementation of the Basic Package of Health Rights is ensuring its even financing in all cantons in FBiH, or in other words, timely budget planning and securing the financing. Some cantons have failed to harmonize their decisions with the Federation Decision by the set date (May 1, 2009), and they also failed to provide funds. Since there is no institutional accountability system in place, there are no sanctions for cantonal ministries (ministers) who fail to ensure harmonization of the cantonal legislation with the Federation law in due time and implementation of the law in “their” cantons. The only way of holding them accountable are civil suits for exercising the legally provided rights, which are little used due to lack of knowledge/information of the citizens or lack of their trust in state institutions.

The laws lack precision concerning the obligation to provide information to population on their rights in the field of health care and health insurance. Laws (on health insurance, health care and patients’ rights) do not deal with this and they fail to impose this obligation on the institution health care system. The question is whether this is an intentional or unintentional omission on the part of legislative or executive powers. Non-adoption of the comments of the non-governmental organizations that point at the necessity of providing for institutional obligation to provide information to population on their health care rights adds weight to argument that those omissions are deliberately made, that the legislator takes passive and ignorant attitude towards the population (who are financing health budgets) to make them use as little as possible of their rights and not to demand compensation if the health care rights are violated.

Another argument to support the above conclusion is unjustified and unreasonable provision of deadline for registration with the employment institutes upon completion of education or termination of employment contracts – this suggests that the FBiH legislator intends to contribute to budget savings by restricting the elementary right to health care to the most vulnerable/the poorest groups of population, while simultaneously developing and promoting Social Inclusion Strategies.

All new laws and/or amendments to laws that are related to social or health care should be put up for public debate so that all stakeholders in the system, including citizens, may take part in policy making and learn about the rights provided under the law. One positive example of this was putting the Draft Law on Health Care of FBiH in the public debate procedure by the Health Commission of the Parliament of FBiH in November 2009. However, the downside is that the adopted law had not incorporated suggestions provided at those debates.

High percentage of uninsured population where majority are the employees whose employers are not paying contributions mandated by law suggest that there is a need to strengthen the work of labor inspections, conducting more regular controls and imposing harsher penalties on the employers<sup>22</sup> breaching the law, especially in the Republika Srpska having in mind the large percentage of health uninsured persons from this entity.

The non-governmental organizations that take upon themselves a part of the state's obligations and inform citizens on their rights, as well as those NGOs who are pointing at problems in implementation of health care in BiH should be recognized and supported by institutions – by offering them a part in policy making and providing them with financial support. In addition, it is necessary to form a single association that would deal with patient protection rights irrespective of the type of disease and carry out continual monitoring and evaluation of implementation of the Law on Patients' Rights and other laws/decisions in this field.

With respect to legislative amendments, the demands of non-governmental organizations to amend the Law on Health Insurance of FBiH and abolish the deadline for registration with the employment institutes, which had been submitted to the Parliament of FBiH on several occasions, are still standing. Although the non-governmental organizations' request to amend the Law on Health Insurance of FBiH regarding the establishment of the fund for procurement of drugs from essential list is in the parliamentary procedure, it is necessary to follow its adoption and harmonization with cantonal legislation and consistent and timely implementation at cantonal level.

---

<sup>22</sup> In FBiH, Law on Contributions of FBiH provides for fines of 1,000 KM to 5,000 KM for employers not paying contributions for their employees, while in RS, the Law on Labor provides for fines ranging between 2,000 KM and 15,000 KM for employers who omit to register their employees with the health insurance fund.

## 7. Annex

**Table 1.**  
**Overview of insurees and insured persons in FBiH**

Insurees and their family members on the basis of insurance	Cantonal health insurance funds										Total FBiH
	Una-Sana-Bihać	Posavski-Odžak	Tuzlanski-Tuzla	Zeničko-dobojski - Zenica	Bosansko-podrinjski-Goražde	Srednjobosanski-N.Travnik	HNK-Mostar	Zapadnohercegovački-Grude	Canton Sarajevo-Sarajevo	Canton 10-Livno	
	Average number	Average number	Average number	Average number	Average number	Average number	Average	Average	Average	Average number	
<b>1. Compulsory insurance beneficiaries:</b>											
Employed with their employers	38.104	5.459	94.389	78.951	6.073	48.365	45.983	16.877	127.292	11.202	<b>472.695</b>
Farmers	86	2.591	3.139	462	17	2.181	911	2.779	12	1.903	<b>14.081</b>
Pensioners	24.654	2.929	77.937	62.643	6.248	38.597	35.498	9.973	91.266	9.641	<b>359.386</b>
Unemployed registered with health insurance	21.758	2.612	51.517	46.603	1.829	14.325	19.237	5.996	42.658	4.549	<b>211.084</b>
The Disabled, civilian war victims, etc.	11.919	1.157	13.587	1.148	577	3.669	3.122	1.581	643	751	<b>38.154</b>
Foreign insurees	7.052	546	9.916	0	64	3.275	3.929	1.875	1.655	2.020	<b>30.332</b>
Other insurees	0	427	50	7.171	148	4.957	1.225	1.562	9.307	652	<b>25.499</b>
Persons paying their own contributions	1.448	61	3.719	64	20	89	127	137	646	367	<b>6.678</b>
<b>Total insurees.</b>	<b>105.021</b>	<b>15.782</b>	<b>254.254</b>	<b>197.042</b>	<b>14.976</b>	<b>115.458</b>	<b>110.032</b>	<b>40.780</b>	<b>273.479</b>	<b>31.085</b>	<b>1.157.909</b>
<b>2. Family member of an insuree covered by insurance:</b>											
Family members of employees with employer. Fam. members of farmers	39.579	4.887	86.059	70.287	5.759	47.491	38.866	16.720	77.072	10.674	<b>397.394</b>
Fam. members of pensioners	80	1.253	1.790	479	10	1.219	609	1.602	7	972	<b>8.021</b>
Fam. member of unemployed registered with health insurance	11.012	<b>1.154</b>	31.729	28.488	3.100	20.553	13.622	3.989	24.029	3.478	<b>141.154</b>
Fam. member of the killed, civilian war victims, family members of foreign insurees, family members of other insurees	24.404	2.758	48.761	40.500	1.701	13.961	17.344	5.586	25.448	4.301	<b>184.764</b>
Fam. members of people paying their own insurance.	12.451	1.222	10.985	1.796	226	6.037	3.334	2.043	316	925	<b>39.335</b>
	14.788	263	11.620	0	15	3.010	2.267	668	388	1.462	<b>34.481</b>
	0	117	14	2.525	11	4.622	116	277	5.118	212	<b>13.012</b>
	1.414	28	2.053	2	2	85	48	55	149	128	<b>3.964</b>
<b>Total fam. memb.</b>	<b>103.728</b>	<b>11.682</b>	<b>193.011</b>	<b>144.077</b>	<b>10.824</b>	<b>96.978</b>	<b>76.206</b>	<b>30.940</b>	<b>132.527</b>	<b>22.152</b>	<b>822.125</b>
<b>3. Insured persons 2009.</b>	<b>208.749</b>	<b>27.464</b>	<b>447.265</b>	<b>341.119</b>	<b>25.800</b>	<b>212.436</b>	<b>186.238</b>	<b>71.720</b>	<b>406.006</b>	<b>53.237</b>	<b>1.980.034</b>
<b>Insured persons 2008.</b>	<b>206.444</b>	<b>28.506</b>	<b>442.758</b>	<b>343.046</b>	<b>25.856</b>	<b>201.535</b>	<b>184.867</b>	<b>68.659</b>	<b>399.419</b>	<b>53.368</b>	<b>1.954.458</b>

\*Source: Health Insurance Institutes

**Table 2.**  
**Allocations for prescription medicines in 2006 per cantons**

CANTON	Population 2006.	Employed 2006.	Insurance institute revenues in 000KM	Allocations for medicines	% of column 4	Share in sum col. 5	Allocation for medicines per capita
1	2	3	4	5	6	7	8
Bihać	287.624	31.167	49.063	7.975.981	16,26	7,59	27,73
Goražde	33.717	4.192	8.685	1.509.444	17,38	1,44	44,77
Livno	82.197	10.402	14.617	1.811.673	12,39	1,72	22,04
Mostar	227.630	41.799	63.001	4.000.000	6,35	3,81	17,57
Orašje	41.264	6.318	8.988	855.662	9,52	0,81	20,74
Sarajevo	418.891	95.314	216.634	45.826.543	21,17	43,60	109,40
Široki Br.	82.082	14.528	17.860	2.640.000	14,78	2,51	32,16
Travnik	256.191	36.828	47.331	5.280.241	11,16	5,02	20,61
Tuzla	496.280	71.293	126.319	22.689.391	17,96	21,59	45,72
Zenica	401.590	66.658	89.847	12.510.907	13,92	11,90	31,15
<b>F BiH</b>	<b>2.324.472</b>	<b>378.499</b>	<b>642.345</b>	<b>105.099.842</b>	<b>16,36</b>	<b>99,99</b>	<b>45,21</b>

*\*Source: Federation Ministry of Health*