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## LEGAL AND FINANCIAL LIABILITY IN HEALTHCARE — SELECTED ISSUES

**Abstract:** This study addresses the issue of liability for infringing public finance discipline in the healthcare sector. The subjective and objective scope of this type of liability was examined with reference to the Polish healthcare system. The author assessed selected acts constituting violations of public finance discipline relevant to the finances of this system. It was also established that the subjective and objective scope of liability was shaped without taking into account the specifics of the functioning of the public healthcare sector. There are, however, two exceptions that have been analysed in detail in this study.

**Keywords:** public finance discipline, healthcare

### INTRODUCTION

Legal liability of entities operating in the Polish healthcare system is multi-threaded and does not concern only one branch of law. In legal literature, however, most attention is devoted to criminal liability of persons operating in the medical profession, as well as to civil liability of these entities and other entities performing medical activities. Undoubtedly, it is highly justified above all in the social significance of criminal and civil liability of these entities, as evidenced by very rich jurisprudence of the Supreme Court in this regard.

There are a number of legal institutions in the Polish public finance system aimed at forcing proper collection and spending of public funds. Liability for a violation of public finance discipline regulated in the provisions of the Act on liability for infringing public finance discipline<sup>1</sup> is the most important one among

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<sup>1</sup> Act of December 17th, 2004 on liability for infringing public finance discipline (Journal of laws of 2018 item 1458, as amended); further referred to as the ALIPFD.

them. The issue of this kind of liability in the healthcare sector, as compared to criminal and civil liability, has not yet been subject to a comprehensive monographic study. There are also few scientific studies of a fragmentary nature that address this issue.

Legal and financial liability in the healthcare sector is complex. This is due to several reasons. The most important of these reasons is the fact that there is no single resource of funds from which expenditures for the implementation of the state's constitutional tasks in the field of healthcare are covered. Public funds allocated for financing tasks in the field of health protection come from at least four public-law sources. Namely, the main source of financing the health system is the health insurance premium, constituting revenues of the National Health Fund's financial plan.<sup>2</sup> Expenditure from the state budget and budgets of local government units<sup>3</sup> are also used to finance public tasks in the scope of healthcare. European funds spent under nationwide and regional operational programmes under the 2014–2020 financial perspective are also worth noting.<sup>4</sup>

The above indicates the multiplicity of entities spending public funds allocated to financing healthcare and legal forms of their implementation. This significantly affects the subjective and objective scope of liability for infringing public finance discipline in connection with the collection and spending of public funds in the healthcare sector.

## OBJECTIVE SCOPE OF LIABILITY IN THE HEALTHCARE SECTOR

The issue of liability for infringing public finance discipline does not cover all principles of managing public funds.<sup>5</sup> The scope of liability for infringing public finance discipline is specified in the provisions of art. 5–18c ALIPFD. It is currently *numerus clausus* of financial and legal delicts. Most acts violating public finance discipline can be committed in connection with the management of public funds under the public healthcare system. For example, only the following delicts occurring in connection with the collection and spending of public funds concerning the public healthcare sector can be indicated. These will primarily include transferring or granting of subsidies in violation of the principles or procedure for transferring or granting subsidies referred to in art. 115 sec. 3

<sup>2</sup> Further referred to as NFZ or the Fund.

<sup>3</sup> Further referred to as LGUs.

<sup>4</sup> See P. Lenio, *Publicznoprawne źródła finansowania ochrony zdrowia* [Public-law sources of financing health care], Warsaw 2018.

<sup>5</sup> A. Kościńska-Paszowska, *Komentarz do art. 1* [Commentary to art. 1], [in:] K. Borowska, A. Kościńska-Paszowska, T. Bolek, *Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz* [Liability for infringing public finance discipline. Commentary], Warsaw 2012, p. 16.

of the Act on medical activity,<sup>6</sup> as well as failure to approve a submitted subsidy settlement on time, and failure to specify the amount of subsidy subject to return to the budget (art. 8 ALIPFD). Acts violating public finance discipline related to the issue of subsidies will also include spending of subsidies referred to in art. 115 sec. 3 AMA, contrary to the purpose determined by the grantor, failure to settle them in a timely manner, as well as failure to return the subsidy in due amount in due time (art. 9 ALIPFD).

From October 1st, 2018 acts violating the public finance discipline also include transferring or granting subsidies for entities of the higher education system and science in violation of the principles or procedure for transferring or granting subsidies; spending of subsidies for entities of the higher education system and education in a manner inconsistent with their purpose and failure to return the subsidies for entities of the higher education and science system in due time. The catalogue of delicts related to the financing of higher education results from art. 9a ALIPFD. This provision has been added to the Act on liability for infringing public finance discipline due to the entry into force of the reform concerning financing of higher education systems in Poland.<sup>7</sup> With regard to the healthcare sector, it may apply to granting and use of subsidies for higher education institutions intended for medical schools. Literature on the subject primarily indicates that a subsidy is of a general nature, which means that competent bodies of a given university decide about its actual purpose and use. The above cannot, however, mean liberty in the directions of spending the subsidy. Spending funds received in the form of subsidies for purposes other than those provided for in the Act — Higher education and science law<sup>8</sup> and university statutes<sup>9</sup> by medical school authorities may be treated as spending that is inconsistent with the purpose as defined in art. 169 of the Act on Public Finance.<sup>10</sup> As a consequence, it may lead to an act violating the public finance discipline referred to in art. 9a item 2 ALIPFD.

Acts infringing public finance discipline in the healthcare sector may include delicts related to management of EU and foreign funds (art. 13 ALIPFD), actions inconsistent with the public procurement principles described as violations of public finance discipline in art. 17 ALIPFD, as well as non-performance or improper

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<sup>6</sup> Act of 15th April 2011 on medical activities (Journal of laws from 2018 item 2190, as amended); further referred to as the AMA.

<sup>7</sup> The provision of art. 9a was added to the Act on liability for infringing public finance discipline based on art. 90 of the Act of July 3rd 2018 — Regulations introducing the Act — Law on Higher Education and Science (Journal of laws item 1669, as amended) and entered into force on October 1st 2018.

<sup>8</sup> The Act of July 20th 2018 — Law on Higher Education and Science (Journal of laws item 1668, as amended).

<sup>9</sup> W. Miemieć, *Komentarz do art. 169* [Commentary to art. 169], [in:] *Ustawa o finansach publicznych. Komentarz* [The Act on public finances. Commentary], ed. Z. Ofiarski, Warsaw 2019, p. 976.

<sup>10</sup> The Act of August 27th 2009 on public finances (Journal of laws of 2019 item 869).

performance of responsibilities in the scope of management control in public finance sector units by the manager of a given public finance sector unit strictly defined in art. 18c ALIPFD.

From the perspective of the objectives of this study, acts infringing public finance discipline described in art. 12a and 14 item 2 ALIPFD are significant. These delicts will be examined in detail later in the study. The provision of art. 12a ALIPFD penalises incurring obligations in connection with implementation of a health policy programme, a project which has not been submitted for assessment by the President of the Agency for Health Technology Assessment and Tariff System, despite the existence of such an obligation or a project which was negatively assessed by the President of the Agency for Health Technology Assessment and Tariff System. According to art. 14 item 2 ALIPFD, failure of a public finance sector unit to pay health insurance premiums in due time constitutes a violation of public finance discipline. It should be pointed out here that this provision does not apply strictly to management of public funds under the healthcare system. The delict referred to in art. 14 item 2 ALIPFD can be committed in every unit of the public finance sector, not those operating in the health sector. However, this provision is essential for the collection of public funds allocated for the implementation of public tasks in the field of health protection from health insurance premiums as the main source of financing the health system in Poland.

While in accordance with art. 5 sec. 1 item 1–3 ALIPFD, failure to establish receivables of the State Treasury, local government unit or other unit of the public finance sector or establishing such a receivable at an amount lower than that resulting from correct calculations, failure to collect or pursue receivables of the State Treasury, local government unit or other unit of the public finance sector, or collecting or pursuing the receivable at an amount lower than that resulting from correct calculations as well as annulment of receivables of the State Treasury, local government unit or other unit of the public finance sector not in accordance with the regulations, postponing its payment or distribution into instalments or allowing for its limitation constitute infringements of public finance discipline. Based on art. 5 sec. 3 ALIPFD, the aforementioned provision will not, however, apply to receivables due to premiums to be collected by the Social Insurance Company<sup>11</sup> and the President of the Farmers' Social Security Fund.<sup>12</sup> This means that art. 5 sec. 1 ALIPFD does not apply to health insurance premiums, as in accordance with art. 68 sec. 1 item 1 letter c of the Act on the social insurance system,<sup>13</sup> the scope of activities of ZUS includes, among others, establishing and collecting health insurance premiums. Health insurance premiums of the vast majority of people who

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<sup>11</sup> Further referred to as ZUS.

<sup>12</sup> Further referred to as KRUS.

<sup>13</sup> The Act of October 13th 1998 on the social insurance system (Journal of laws of 2019 item 300, as amended).

are covered by general health insurance are paid and registered in ZUS (art. 87 sec. 4 item 1 and 3 of the Act on healthcare services financed from public funds<sup>14</sup>).

## SUBJECTIVE SCOPE OF LIABILITY IN THE HEALTHCARE SECTOR

Liability for infringing public finance discipline is not universal. Only persons listed exhaustively in art. 4 ALIPFD endorse such liability, subject to art. 4a ALIPFD. It can be assumed that they are “natural persons who, due to their position in a unit of the public finance sector, their function, duties entrusted, or the contract concluded, allocate public funds, and make specific decisions in this area”.<sup>15</sup>

In the light of art. 4 ALIPFD the subjective scope of liability for infringing public finance discipline can be divided into the following categories of natural persons. They include persons who are part of a body that implements the budget or financial plan of a public finance sector unit or a managing body of an entity not included in the public finance sector, which has transferred public funds to use or dispose of, or managers of the property of these units or entities; managers of public finance sector units; employees of public finance sector units or other persons who with a separate act or on its basis are entrusted with the execution of duties, the non-performance or improper performance of which constitutes an act violating public finance discipline in such an entity, as well as persons performing activities related to the use of these funds or disposing of these funds on behalf of an entity not included in the public finance sector, which was transferred public funds to use or dispose of.

While art. 4a ALIPFD contains a catalogue of natural persons liable for violations of public finance discipline related to spending European funds specified in art. 13 ALIPFD.

From the above it can be concluded that as in the case of the subjective scope of liability for infringing public finance discipline, the catalogue of entities that can be held liable is not determined by the purpose of allocating public funds or the type of public tasks performed. In other words, the legislator in the current regulations does not provide for a different catalogue of persons liable for infringing public finance discipline in the case of delicts related to management of public funds within the healthcare sector.

The list of natural persons subject to liability for infringing public finance discipline within the public healthcare system should include most of all man-

<sup>14</sup> The Act of August 27th 2004 on healthcare services financed from public funds (Journal of laws of 2018 item 1510, as amended).

<sup>15</sup> A. Rotter, *Zakres podmiotowy odpowiedzialności za naruszenie dyscypliny finansów publicznych z tytułu nieprawidłowości w dysponowaniu środkami publicznymi* [Subjective scope of liability for infringing public finance discipline due to irregularities in the disposal of public funds], [in:] A. Talik, W. Robaczyński, A. Babczuk, *Dyscyplina finansów publicznych. Podstawy i zakres odpowiedzialności* [Public finance discipline. Basics and scope of liability], Warsaw 2015, p. 27.

agers of medical entities which are not entrepreneurs, among others managers of independent public healthcare institutions,<sup>16</sup> as well as persons acting on behalf of these entities (e.g. employees).

However, it should be underlined that in the light of art. 4 sec. 1 item 4 ALIPFD liability is also endorsed by persons acting on behalf of entities not included in the catalogue of public finance sector units. The condition is to perform activities related to the use or disposal of public funds transferred on behalf of this type of entity. The most frequent delicts committed in practice by persons performing specific activities on behalf of an entity not included in the public finance sector are violations defined in art. 9 ALIPFD related to irregularities regarding the expenditure procedure and settlement of public funds received in the form of subsidies (spending of subsidies contrary to the purpose determined by the grantor, failure to settle the subsidy received, failure to return the subsidy due in due time).

In the healthcare sector, the provision of art. 9 ALIPFD may apply, among others, to medical entities operating in the legal form of limited liability companies with the participation of the Treasury or LGUs (they are not included in the public finance sector) receiving targeted subsidies for the implementation of tasks specified in art. 114 sec. 1 item 1–6 AMA.

#### LIABILITY FOR INFRINGING DISCIPLINE RELATED TO THE OBLIGATION TO PAY HEALTH INSURANCE PREMIUMS

Pursuant to art. 14 ALIPFD, failure to pay social insurance premiums, health insurance premiums, contributions to the Labour Fund, contributions to the Guaranteed Employee Benefits Fund, payments to the State Fund for Rehabilitation of the Disabled, as well as contributions to the Solidarity Support Fund for the Disabled in a timely manner constitute violations of public finance discipline. Payment of the above listed public levies at an amount lower than that resulting from correct calculations also constitutes a violation of public finance discipline.

The said regulation has been functioning since the beginning of the Act on liability for infringing public finance discipline in principle with an unchanged content.<sup>17</sup> It has been broadly commented on by representatives of financial law

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<sup>16</sup> Further referred to as IPHIs. Based on art. 46 sec. 1 AMA, the manager is responsible for the management of a medicinal entity that is not an entrepreneur.

<sup>17</sup> It has been revised twice. The first change introduced by the Act of August 19th 2011 amending the Act on liability for infringing public finance discipline and certain other acts (Journal of laws no. 240, item 1429) and it concerned the issue of overrun payment dates. The second change was introduced on the basis of the Act of October 23rd 2018 on the Solidarity Support Fund for the Disabled (Journal of Laws, item 2192). As a result of the introduced change, the catalogue of delicts was extended with failure to pay in time or payment of contributions to the Solidarity Support Fund for the Disabled at an amount lower than that resulting from correct calculations.

and has been subject to rich jurisprudence of authorities adjudicating in cases concerning violations of public finance discipline, including the Main Commission Adjudicating in Cases concerning Violations of Public Finance Discipline.<sup>18</sup>

Interpreting the said regulation, the wording of art. 46 sec. 1 APF should be taken into consideration. In accordance with it, public finance sector units may incur liabilities to be financed in a given year up to the amount resulting from the expenditure plan or unit costs, lower wages and salaries, social security and Labour Fund contributions, other premiums, fees and payments resulting from liabilities incurred in previous years, subject to art. 136 sec. 4 and art. 153 APF.

It is highlighted that the goods protected by art. 14 ALIPFD is the timely performance of receivables required to be paid by a public finance sector unit, and failure to pay certain receivables within the time limit or their payment an amount lower than that resulting from correct calculations constitute a violation of public finance discipline.<sup>19</sup>

Legal and financial consequences of failure to pay public levies listed in this provision within the time limit are not significant for the fact of committing a delict arising from art. 14 ALIPFD. The potential obligation to pay interest for delay, referred to in art. 53 § 1 of the Act — Tax Ordinance,<sup>20</sup> is not an element of the analysed act that violates public finance discipline. Commitment of the act, referred to in art. 14 ALIPFD, is of a formal nature.

The obligation to pay interest is significant for the occurrence of liability resulting from art. 16 ALIPFD. In accordance with this provision, failure to fulfil the obligation in due time by a public finance sector unit, including the obligation to return customs duty, tax, overpayment or improperly paid social or health insurance premiums, which results in the payment of interest, penalties or fees or the interest rate on these receivables<sup>21</sup> constitutes a violation of public finance discipline. Therefore, art. 14 ALIPFD should be treated as *lex specialis* in relation to art. 16 ALIPFD.<sup>22</sup>

The analysis of jurisprudence of the Main Adjudicating Committee shows that the manager of a unit or a person infringing public finance discipline due to failure to pay public levies on time or payment at an amount lower than the public levies mentioned in art. 14 ALIPFD. According to art. 19 sec. 2 ALIPFD, liability

<sup>18</sup> Further referred to as GKO or the Main Adjudicating Committee.

<sup>19</sup> A. Rotter, *Komentarz do art. 14* [Commentary to art. 14], [in:] *Ustawa o odpowiedzialności za naruszenie dyscypliny finansów publicznych* [Act on liability for infringing public finance discipline], ed. W. Misiąg, Warsaw 2019, p. 1032.

<sup>20</sup> The Act of August 29th 1997 — Tax Ordinance (Journal of laws of 2019 item 900, as amended).

<sup>21</sup> Pursuant to art. 16 sec. 2 ALIPFD, omission referred to in sec. 1 concerning the obligation to return customs duty, tax, overpayment or improperly paid social or health insurance premiums, if payment of interest or interest rates is related to activities aimed at establishing the correctness of the return of such receivables.

<sup>22</sup> K. Borowska, *Komentarz do art. 14* [Commentary to art. 14], [in:] K. Borowska, A. Kościńska-Paszowska, T. Bolek, *Odpowiedzialność za naruszenie...* [Liability for...], p. 92.

for infringing public finance discipline lies with the person who can be blamed at the time of committing the infringement.

However, fault cannot be attributed if the infringement could not be avoided despite the care required from the person responsible for the performance of the obligation, the non-performance or improper performance of which constitutes an act violating public finance discipline. In the opinion of the GKO, as a result of the wording of the said regulation, the circumstance excluding liability of a manager of an entity will be, for example, the lack of funds in the bank account in the situation of taking over this function. The objective impossibility excludes the attribution of fault.<sup>23</sup> A similar situation may occur if a unit receives funds intended for its maintenance from a higher-level disposer without it affecting the due date and amount of funds received.<sup>24</sup> However, the lack of funds in the unit's bank account cannot constitute an autonomous condition that excludes liability.<sup>25</sup>

The Main Adjudicating Committee also stated that a short (one-day) delay in the payment of public levies, referred to in art. 14 ALIPFD, remains at a negligible level of harm to the order of public finances and it is justified in this case to discontinue the pending proceedings, despite the fact that an act infringing public finance discipline occurred.<sup>26</sup>

With regards to entities operating within the public healthcare system, the GKO indicated that the poor financial situation of hospitals is a well-known fact. However, it cannot justify a hospital director and release him/her from his/her liability for timely implementation of certain public-law obligations.<sup>27</sup> The obligation to pay health insurance premiums on time takes priority over other types of expenses.<sup>28</sup> Even if these expenses are used to implement healthcare tasks. According to the GKO

Failure to pay health insurance premiums or delaying their payment contributes to limiting funds for health protection, and consequently undoubtedly leads to lowering the level of securing the health needs of citizens, even if these funds were allocated to the purchase of ambulances. Even if it is recognised that such activities served a good cause, they destabilised the public finance order. The decision on the purchase of new vehicles and the resulting payments should, however, be correlated with other financial burdens, so as not to cause payment holdups to regulate public and legal liabilities and contractual obligations resulting from the applicable provisions. Therefore, it was necessary to adjust the scale of purchases, as well as their distribution in time, to payment possibilities.<sup>29</sup>

<sup>23</sup> Judgment of GKO of 20.01.2003, DF/GKO/Odw.-120/156/RN-34/2002, LEX.

<sup>24</sup> Judgment of GKO of 26.10.2006, DF/GKO-4900-75/93/06/2254, LEX.

<sup>25</sup> W. Robaczyński, *Komentarz do art. 14* [Commentary to art. 14], [in:] *Ustawa o odpowiedzialności...* [Act on liability...], ps. 1033.

<sup>26</sup> Judgment of GKO of 1.01.2009, BDF1/4900/36/35/09/1192.

<sup>27</sup> Judgment of the GKO of 4.11.2010, BDF1/4900/79/90/10/2216.

<sup>28</sup> Judgment of the RKO of 8.5.2012, DB-0965/14/44/12, LEX.

<sup>29</sup> Judgement of the GKO of 5.3.2009, BDF1/4900/3/3/09/75, Legis.



The subjective scope of liability arising from art. 14 ALIPFD is also significant. As already determined, liability for improper performance of public-law obligations is primarily borne by the manager of a public finance sector unit. According to art. 53 sec. 1 APF, the manager is responsible for the entire financial management of the unit. In addition, an employee who has been effectively entrusted with duties related to proper implementation of cash benefits of a public nature listed in art. 14 ALIPFD can also be held liable.<sup>30</sup>

A more important issue concerning the subjective scope of liability under art. 14 ALIPFD seems to be, however, its statutory limitation only to irregularities occurring in units in the public finance sector. This means that the said regulation protects the financial condition of the health insurance system (as well as the social insurance system) by penalising incorrect payment of health insurance premiums only by units included in the public finance sector. This results in the fact that the provision of art. 14 ALIPFD will not apply to payers of health insurance premiums operating within the private sector. It will not apply, among others, to commercial law companies with the participation of the State Treasury or local government units. According to art. 9 item 14 APF entities of the public finance sector do not include enterprises, research institutes, institutes operating within the Łukasiewicz Research Network, banks, and commercial law companies.

Therefore, there are no negative consequences for persons acting on behalf of entities from outside the public finance sector due to late payment of health insurance premiums or their payment in an incorrect amount. For an entity being a premium payer, there will be negative consequences in the form of an obligation to pay interest for late payment. However, this applies to all payers, including public finance sector units.

#### INFRINGING PUBLIC FINANCE DISCIPLINE IN CONNECTION WITH THE IMPLEMENTATION OF A HEALTH POLICY PROGRAMME

As of November 30th 2017, the Act of September 29th 2017 amending the Act on healthcare services financed from public funds and some other acts entered into force.<sup>31</sup> Pursuant to the provisions of the aforementioned act, a new delict described in art. 12a ALIPFD was added to the Act on liability for infringing public finance discipline. In accordance with this provision, incurring a liability in relation to the im-

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<sup>30</sup> Pursuant to art. 53 sec. 2 APF, the manager of a unit may entrust specific duties in the area of financial management to employees of the unit. Acceptance of duties by these persons should be confirmed by a document in the form of a separate personal authorisation or indication in the organisational regulations of this unit.

<sup>31</sup> The act of September 29th 2017 amending the act on healthcare services financed from public funds and some other acts (Journal of laws item 2110).

plementation of a health policy programme,<sup>32</sup> a project of which has not been submitted for assessment from the President of the Agency for Health Technology Assessment and Tariff System,<sup>33</sup> despite the existence of such an obligation or a project of which was negatively assessed by the President of the Agency for Health Technology Assessment and Tariff System, constitutes a violation of public finance discipline.

Pursuant to art. 48 sec. 1 AHCS, health policy programmes can be developed, introduced, implemented, and financed by ministers and local government units. The fund implements health policy programmes commissioned by the minister competent for health affairs. Projects of health policy programmes are developed on the basis of maps of health needs and available epidemiological data. Health policy programmes developed, introduced, implemented, and financed by local government units, if they relate to guaranteed services covered by programmes implemented by ministers and the Fund, must be coherent with them substantively and organisationally.

A project of a health policy programme is forwarded to the Agency for Health Technology Assessment and Tariff System for assessment of the project of a given health policy programme by the President of the Agency (art. 48a sec. 4 AHCS).

The President of the Agency prepares an assessment within 2 months from the receipt of the project of a given health policy programme or a corrected project. Then, the opinion is forwarded to the entity which developed the project of a given health policy programme. Pursuant to art. 48a sec. 11 AHCS, the commencement of introduction, implementation, and financing of a health policy programme can take place only upon a positive or conditionally positive assessment from the President of the Agency.<sup>34</sup>

Before the act of September 29th 2017 amending the act on healthcare services financed from public funds and certain other acts entered into force, there was no legal sanction related to incurring liabilities in connection with the implementation of a health policy programme without a positive assessment from the President of the Agency. It meant that in practice they were often implemented omitting the procedure described in art. 48a AHCS. Provisions of the Act on healthcare services financed from public funds did not provide any *expressis verbis* prohibition to implement health policy programmes without a positive assessment from the President of the Agency. This prohibition was introduced only with the above-mentioned act.

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<sup>32</sup> Pursuant to art. 5 item 29a AHCS, a health policy programme should be understood as a set of planned and intended health care activities assessed as effective, safe, and justified, enabling the achievement of targets within the given time, consisting in detecting and achieving specific health needs and improving the health of a given group of beneficiaries, developed, introduced, implemented, and financed by the minister or a local government unit.

<sup>33</sup> Further referred to as the Agency.

<sup>34</sup> An entity that received a conditionally positive assessment referred to in sec. 4, is obliged to introduce changes in line with this assessment in the project of a given health policy programme before starting introduction, implementation, and financing of the health policy programme.

In the grounds to the bill of September 29th 2017 amending the Act on health care services financed from public funds and some other acts, it was pointed out that

the Agency, when assessing a project of a given programme, assesses i.a. its effectiveness and cost effectiveness based on available clinical data and scientific publications, i.e. based on data relevant for the so-called proven effectiveness. If, in the opinion of the Agency, a negative opinion about a programme should be issued, then it is reasonable to claim that the actions proposed in it will not bring the intended result and the financial resources will not be reasonably spent. By imposing on it the principles resulting from the Act of August 27th 2009 on public finances, that spending public funds is to be economical, effective, and purposeful, a situation may arise that a programme which does not bring added value, will be implemented not in accordance with these principles, and funds will be spent for this purpose. Local government units now consider obtaining the assessment of the President of the Agency as a *pro forma* activity and take advantage of the fact that there are no sanctions in the case of implementing a programme which received a negative assessment and incur expenses for this purpose.<sup>35</sup>

Therefore, it should be pointed out that the purpose of introducing a new delict to the provisions of the Act on liability for infringing public finance discipline confirmed the legislator's care for the correct and effective spending of public funds for the implementation of tasks in the field of health protection. However, one can question the necessity of adding art. 12a ALIPFD to the provisions of the act. It may be justified to claim that the introduction of the obligation to obtain a positive assessment from the President of the Agency, which was also implemented together with the entry into force of art. 12a ALIPFD, was sufficient to protect public finances and ensure proper spending of funds from the state budget or local government budgets.<sup>36</sup> Statutory dependence of the implementation of a health policy programme on obtaining a positive assessment from the President of the Agency, primarily in local government units, caused the necessity to examine resolutions of the authorities that implement health policy programmes also in relation to the above-mentioned assessment by the supervisory authorities. At this stage, it is possible to eliminate health policy programmes that do not have a positive assessment from the President of the Agency.

## CONCLUSION

The subjective scope of liability for infringing public finance discipline in the healthcare system does not differ in any way from its subjective scope in relation to the remaining spheres of collecting and spending public funds. There are no legal arguments for the different formation of legal and financial liability in the he-

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<sup>35</sup> Grounds for the bill of the act amending the act on health care services financed from public funds and the act on liability for infringing public finance discipline, Sejm paper of Sejm of the 8th term no. 1791, pp. 6–7, [www.sejm.gov.pl](http://www.sejm.gov.pl).

<sup>36</sup> See art. 48a sec. 11 AHCS.

althcare sector. The provisions of the Act on liability for infringing public finance discipline are aimed at forcing proper management of public funds in a uniform manner, regardless of the purpose of these funds.

The objective scope of legal and financial liability was shaped without taking into account the specifics of the functioning of the public healthcare sector. It can be concluded that there are no justified reasons for a significant extension of the objective scope of liability for infringing public finance discipline with respect to the healthcare system. An exception in this regard is art. 12a added to the Act on liability for infringing public finance discipline relating to incurring liabilities in connection with the implementation of a health policy programme that has not been assessed or has been assessed negatively by the President of the Agency, as well as the provision of art. 14 ALIPFD. The latter, however, concerns irregularities related to payment of health insurance premiums and other public levies mentioned in it in all units of the public finance sector.

When summarising the analysis of art. 14 ALIPFD, it can be concluded that this provision only provides partial protection for the finances of the National Health Fund, whose revenues come mainly from health insurance premiums. Therefore, it is the public finance sector units that have a special duty to care for the correct implementation of public-law obligations. It may seem that there are no rational arguments for covering only some premium payers with liability for infringing public finance discipline. However, it should be pointed out that liability for infringing public finance discipline is to be protected by sound management of public funds. Therefore, it would be unjustified to extend the objective scope of liability under art. 14 ALIPFD on private sector entities not managing public funds.

According to the author of this study, contrary to the claims arising from the grounds to the bill of September 29th 2017 amending the Act on healthcare services financed from public funds and certain other acts,<sup>37</sup> there were insufficient grounds to expand the list of acts that violate public finance discipline with a delict arising from art. 12a ALIPFD. To protect public finances and ensure proper spending of funds from local government budgets, it was justified to introduce the obligation to obtain a positive or conditionally positive assessment from the President of the Agency on a given health policy programme. Making the commencement of the introduction, implementation, and financing of a health policy programme dependent on obtaining a positive assessment of a given programme should sufficiently protect the finances of local government units and enforce bodies of LGUs to correctly and efficiently spend public funds. The lack of a positive assessment from the President of the Agency on a preventive healthcare programme results in the annulment of the resolution of the LGU's decision-making body in this regard.<sup>38</sup>

<sup>37</sup> Grounds to the bill..., pp. 6–7.

<sup>38</sup> Supervisory decision of the Lubusz Voivodship of December 7th 2018 No. NK-1.4131.196.2018.TDOM, [www.bip.lubuskie.uw.gov.pl](http://www.bip.lubuskie.uw.gov.pl); Supervisory decision no. PNK.1.4130.30.2012

## ODPOWIEDZIALNOŚĆ PRAWNOFINANSOWA W OCHRONIE ZDROWIA — WYBRANE ZAGADNIENIA

### Streszczenie

W niniejszym opracowaniu poruszono problematykę odpowiedzialności za naruszenie dyscypliny finansów publicznych w sektorze ochrony zdrowia. Zbadano zakres podmiotowy i przedmiotowy tego rodzaju odpowiedzialności w odniesieniu do polskiego systemu ochrony zdrowia. Autor dokonał oceny wybranych czynów stanowiących naruszenie dyscypliny finansów publicznych, mających znaczenie dla finansów tego systemu. Ustalono też, że podmiotowy i przedmiotowy zakres odpowiedzialności został ukształtowany bez uwzględnienia specyfiki funkcjonowania publicznego sektora ochrony zdrowia. Istnieją jednak dwa wyjątki, które w niniejszym opracowaniu zostały poddane szczegółowej analizie.

Słowa kluczowe: dyscyplina finansów publicznych, ochrona zdrowia

### BIBLIOGRAPHY

- Borowska K., *Komentarz do art. 14* [Commentary to art. 14], [in:] K. Borowska, A. Kościńska-Paszowska, T. Bolek, *Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz* [Liability for infringing public finance discipline. Commentary], Warsaw 2012.
- Kościńska-Paszowska A., *Komentarz do art. 1* [Commentary to art. 1], [in:] K. Borowska, A. Kościńska-Paszowska T., Bolek, *Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz* [Liability for infringing the public finance discipline. Commentary], Warsaw 2012.
- Lenio P., *Publicznoprawne źródła finansowania ochrony zdrowia* [Public-law sources of financing health care], Warsaw 2018.
- Miemiec W., *Komentarz do art. 169* [Commentary to art. 169], [in:] *Ustawa o finansach publicznych. Komentarz* [The Act on public finances. Commentary], ed. Z. Ofiarski, Warsaw 2019.
- Robaczyński W., *Komentarz do art. 14* [Commentary to art. 14], [in:] *Ustawa o odpowiedzialności za naruszenie dyscypliny finansów publicznych* [Act on liability for infringing public finance discipline], ed. W. Misiąg, Warsaw 2019.
- Rotter A., *Zakres podmiotowy odpowiedzialności za naruszenie dyscypliny finansów publicznych z tytułu nieprawidłowości w dysponowaniu środkami publicznymi* [Subjective scope of liability for infringing public finance discipline due to irregularities in the disposal of public funds], [in:] A. Talik, W. Robaczyński A., Babczuk, *Dyscyplina finansów publicznych. Podstawy i zakres odpowiedzialności* [Public finance discipline. Basics and scope of liability], Warsaw 2015.
- Rotter A., *Komentarz do art. 14* [Commentary to art. 14], [in:] *Ustawa o odpowiedzialności za naruszenie dyscypliny finansów publicznych* [Act on liability for infringing public finance discipline], ed. W. Misiąg, Warsaw 2019.

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of the Świętokrzyskie Voivode of March 16th 2012 (Official Journal of the Świętokrzyskie Voivodeship of April 5th 2012, item 1069).