

## **Summary**

In the Netherlands' new healthcare system, a great deal is expected of the (insured) patient: he or she is required to become a 'care consumer', making rational choices on the basis of comparative information, thus incentivising both care providers and health insurers to raise quality standards. The patient has in effect become the key to the success of the new system. But how realistic is this expectation? Are patients actually in a position to fulfil the role envisaged for them?

The Netherlands Patients' and Consumers' Federation (NPCF) and various members of parliament have expressed doubts, and have suggested that the new healthcare system affords the patient insufficient protection. Patients' rights, it is argued, are too fragmented, creating uncertainty as to exactly what the patient's entitlements are, what the statutory basis of those entitlements is, and the extent to which the various statutory provisions reinforce or compromise one another. Furthermore, new developments and insights have yet to be translated into rights and obligations.

The Minister of Health Welfare and Sport (VWS) accordingly asked the Council for Public Health and Health Care (RVZ) whether it shared these concerns and, if so, whether it felt that a care consumers act could make an effective contribution to consolidation of the care consumer's legal position.

In view of the urgency of the need to report on this matter, the Council's investigations focused on the statutory basis for the rights that are most important in the context of enabling individual patients to act as care consumers. The rights in question are the right to freedom of choice, the right to information, the right to appropriate care and the right to complain.

Although the legal position of the individual patient is generally secure, the Council's research does reveal a number of shortcomings. These mainly surround the right to comparative decision-support information, which is not adequately protected. While the Healthcare Market Regulation Act (Wmg) does address this issue, the relevant provisions do not have sufficient force. The patient cannot derive from the act any right to comparative information regarding the quality and outcomes of care provided for particular conditions, even

though such information is critically important in this context. Another problem is the inaccessibility of patients' rights, in particular the right to appropriate care. This is a serious matter: if it is not clear what a patient is entitled to expect from a care provider or health insurer in a particular situation, the patient's right not only to appropriate care, but also to freedom of choice and to complain are significantly curtailed.

Nevertheless, the Council does not regard an integrated care consumers act as the best solution to the problems it has identified. Such an act would need to address a wide variety of issues, which do not lend themselves to accommodation within a common legal framework. Hence, the act would need to occupy a distinct legal position, complicating harmonisation with the Civil Code. The latter strikes a balance between provisions that allow for contract freedom and provisions that serve to protect vulnerable parties, such as consumers, tenants, employees and patients. Removing from the Civil Code those provisions that afford the patient protection would be more likely to weaken the patient's legal position than reinforce it.

At least equally important is the fact that an integrated care consumers act would enhance neither the legal position of the patient nor the accessibility of patients' rights. The reason being that the legislature could not define rights without also defining the conditions applicable to them. Otherwise the act would be misleading. Furthermore, it is unrealistic to suppose that a patient's rights could be comprehensively specified in the act itself. Excessively detailed legislation can have a restrictive effect. The formulation of general rules with open standards is a more effective way of covering the complexity of daily practice and acknowledging the responsibilities and expertise of medical practitioners. However, an act couched in general terms necessitates the specification of more detailed rules at other legal levels. Hence, a patients' act can never be truly comprehensive.

The Council accordingly recommends two courses of action:

1. Resolving problems and shortcomings by the amendment of existing legislation
2. Increasing access to patients' rights by:

Performing thematic evaluation(s) of patients' rights, with a view to increasing the coherence and consistency of the various statutory provisions and improving alignment with

the problems encountered by patients when seeking to exercise their rights in practice;

Establishing a low-threshold knowledge and advice centre, whose main task would be to gather information about patients' rights and make it available to interested parties; contributory activities in this regard might include acting as an information point for patients and other stakeholders; providing guidance on making complaints; monitoring the situation with regard to the (implementation of) patients' rights, reporting on this topic and making proposals regarding improvements and regarding the thematic evaluation of patients' rights.

The tasks described above are of a public nature and should preferably be assigned to an existing organisation, within which at least some of the necessary expertise and infrastructure already exists and can readily be built upon. The Council recommends the appointment of a precursor body to establish the necessary knowledge and advice centre.

The Council believes that the approach outlined above can make a significant contribution to the continuing metamorphosis of the patient into a care consumer.