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The Voivodeship Governor's Role in Health Safety

Działalność wojewody w zakresie bezpieczeństwa zdrowotnego

SUMMARY

One of the voivodeship governor's areas of public activities encompasses health safety. Being the element of this safety, health protection is the area requiring both responsible and efficient measures, as well as considerable financial means. One of the aspects of the governor's activity within this area is preventing and eradicating human infections and infectious diseases. Within the local area competence, the governor may announce a sanitary epidemiological risk or an epidemic on the territory of the entire voivodeship or its part, introducing orders, prohibitions or obligations provided for in the laws in force.

Keywords: voivodeship governor; health safety; infectious diseases

The obligation to safeguard public safety has been imposed on the public authorities. The legislator itself states that everyone has the right to protect health, and the public authorities are obliged to guarantee particular safety to children, pregnant women, the disabled and the elderly, as well as to counteract infectious diseases and to prevent health-threatening effects of the environment degradation[1].

[1] Article 68 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, Item 483 as amended), hereinafter referred to as the Polish Constitution. Both payers and non-payers of health insurance are entitled to health prevention. It is related to other constitutional rights, particularly with human dignity and legal life protection. See: B. Banaszak, *Konstytucja*

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Pursuant thereto, health safety has gained a public dimension. Particular tasks regarding this safety have been assigned to the public administration, within the framework of which an essential activity area has been ascribed to governors. As local state administration organs, they implement the health policy of the Council of Ministers on the territory of a given region.

Such assignments encompass i.a. the analysis of adequacy and efficiency of the provided health care services with regard to the recognised health needs of the society. The voivodeship self-government cooperates with the governor as regards implementing those tasks[2]. At the local level, the legislator has introduced the institution of cooperation between a governor and a self-government within health care services provision. This cooperation cannot be characterised by the superiority of the state administrative organ over the territorial self-government entity, as the functioning of the latter one is based on the decentralisation principle, which guarantees autonomy for the given voivodeship. This principle applies regardless of the cooperation scope, which is also applicable in the case of health safety.

Another significant element regarding this issue is the National Health Programme, which is supposed to cover not only the society's general health condition but also health threats, as well as assignments aimed at efficiency boost in the health protection system directed at the society's health improvement.

The strategic objective of the National Health Programme (2016–2020) from the employers' perspective is to prolong healthy life expectancy, improve health and life quality, as well as to reduce social inequalities with regard to health[3].

Based on annual information of the territorial self-government entities on implemented or introduced assignments within public health, a governor draws up the summary information alongside the opinion on compliance with the implemented or introduced assignments along with the priorities for the regional health policy, pursuant to Article 12 Item 5 of the Act on Public Health. The compliance assessment of the implemented or introduced assignments with priorities for the regional health policy lies within the governors' competences, as they are the state administration organs of a regional competence in a given area.

Rzeczypospolitej Polskiej. Komentarz, Warszawa 2009, p. 351. The provisions of the Polish Constitution are merely a model setting a general pattern of implementing the health protection right. See: The Polish Supreme Administrative Court Judgement of 23 May, 2017, I OSK 3467/15, LEX No. 2323369. Article 68 of the Polish Constitution describes provisions regarding subjective rights of particular persons. See: P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warszawa 2008, p. 163. In matters relating to public administration obligations, see: P. Szreniawski, *Obowiązek w prawie administracyjnym*, Lublin 2014.

[2] Article 3 Item 4 of the Act of 11 September 2015 on Public Health (Journal of Laws 2017, Item 2237 as amended), hereinafter referred to as the Act on Public Health.

[3] Point I thereof, annex of the Regulation of the Council of Ministers as of 4 August 2016 on the National Health Programme (2016–2020) (Journal of Laws 2016, Item 1492).

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Moreover, they have special assignments and competences within preventing and counteracting human infections and infectious diseases. In the event of the necessity of subjecting the infected patients or the persons suffering from an infectious disease or those suspected to be suffering of such a disease, or those who have had contact with the biological pathogen source, as well as those displaying symptoms of an infectious disease that has not yet been recognised in the country, to isolation or quarantine, a governor provides them with isolation or quarantine conditions by accommodation in appropriate rooms, equipment and directing well-qualified persons to work[4]. Pursuant to Article 2 Item 11 of the Act on Infections and Infectious Diseases, "isolation" is a term referring to isolating a person or a group of persons suffering from an infectious disease, or those suspected to be suffering of such a disease, in order to safeguard them against transferring the given pathogen upon other persons. Quarantine, in turn, pursuant to Article 2 Item 12 of the above-mentioned Act, refers to isolating a healthy person who has been exposed to an infection in order to prevent the spreading of exceptionally dangerous and highly contagious diseases.

The representative of the Council of Ministers is obliged to act locally for the benefit of health safety in order to guarantee appropriate conditions of isolation or quarantine. Within this area, he is therefore obliged to provide appropriate rooms and equipment thereof. If the help of well-qualified persons is indispensable, it is a governor who directs them to work.

In order to guarantee the efficiency of the measures aimed at public health safety providing protection from infections and infectious diseases, a governor draws up an action plan for his voivodeship in the event of an epidemic (which is defined, pursuant to Article 2 Item 9 of the aforementioned Act, as the occurrence of infections or number of cases including infectious diseases in a number significantly higher than it was the case previously on a given territory, or the occurrence of infections or number of cases including infectious diseases that have not occurred so far) for 3 years, with the possibility including up-dates, which is in accordance with Article 44 Item 1 thereof. Such an action plan for the event of an epidemic on the territory of a voivodeship sets forth programme norms, which set out the scope of measures aimed at public health protection from infections and infectious diseases. It is not an act of local law, thus, it does not impose any obligations, nor includes orders for external entities, including citizens. Due to the fact that this plan is prepared for 3 years, it may turn out that within a given area it may not correspond to the primarily set up objectives, hence, its up-date is permissible.

[4] Article 33 Item 7 of the Act of 5 December 2008 on Preventing and Combating Human Infections and Infectious Diseases (Journal of Laws 2016, Item 1866 as amended), hereinafter referred to as the Act on Infections and Infectious Diseases.

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The aforementioned plan encompasses elements referred to in Article 44 Item 2 of the Act on Infections and Infectious Diseases, which include: 1) a description of potential life- or health-threatening factors that may occur on the territory of a voivodeship, including a risk analysis of human infections and infectious diseases, 2) a list of location of a medical entity's medical establishments and of the public utility facilities that can be used for treatments, isolation or quarantine, 3) a number of persons who can receive treatments, be subject to isolation or quarantine in a medical entity's medical establishment and other public utility facilities, 4) a list of names of persons who can be referred to measures aimed at public health protection from infections and infectious diseases, 5) other information necessary to guarantee public health safety and to prepare a plan. Taking into account all these elements is an obligatory condition to guarantee the efficiency of measures aimed at public health safety and its protection against infections and infectious diseases.

The preparation and up-date of the above-mentioned plan occurs, pursuant to Article 44 Item 3 of the Act on Public Health, on the basis of the data and information received from local self-government units, medical entities and other authorising officers of public utility facilities. Collecting this information allows a governor to prepare and up-date the plan to an optimal extent.

Upon a governor's written request, pursuant to Article 44 Item 4 of the aforementioned Act, local self-government units, medical entities and other authorising officers of public utility facilities are obliged to transfer the data concerning lists of names of persons who can be referred to measures aimed at public health protection from infections and infectious diseases, including: 1) name and surname, 2) occupation, 3) birth date, 4) personal identification number (PESEL), or, if such number has not been granted, the series and the number of the passport or another identification document, 5) sex, 6) residence address and information indispensable to draw up a plan, particularly: a) name and location of a medical entity's medical establishment or of the public utility facility, b) layout and area of the rooms being parts of a medical entity's medical establishment or of the public utility facility, c) estimated number of persons who can receive treatments, be subject to isolation or quarantine. A governor directs well-qualified persons to work, if there is a need to subject the infected patients or the persons suffering from an infectious disease or those suspected to be suffering of such a disease, or those who have had contact with the biological pathogen source, as well as those displaying symptoms of an infectious disease that has not yet been recognised in the country. In order to accomplish this task, a governor needs to gather data of such persons, thus, the legislator has adopted a solution, whereby the entities referred to in Article 44 Item 4 of the Act on Public Health transfer a list of names of persons who can be referred to measures aimed at public health protection from infections and infectious diseases to a governor. Transferring such lists does not occur *ex officio* but upon a governor's written motion. Lists of names of persons who can be referred to measures aimed

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at public health protection from infections and infectious diseases are to include at least elements referred to in Article 44 Item 4 of the above-mentioned Act.

In Article 44 Item 66 thereof, the legislator obliges a governor to publicly announce an action plan in the event of an epidemic, especially by publishing it in the Public Information Bulletin, except for personal data subject to protection. An epidemic constitutes a great threat for health safety, hence, it is indispensable that the information on the given danger, its kind and results, as well as on a possibility of an immediate treatment, could reach as many parties concerned as possible. Therefore, a public announcement is to be conducted in a manner reaching as many recipients as possible and as quickly as possible.

A state of epidemic threat or a state of epidemic on the territory of a voivodeship or its part is announced and cancelled by a governor in a form of a decree, upon a voivodeship sanitary inspector's motion, pursuant to Article 46 Item 1 of the aforementioned Act. Such a decree is an act of local law, hence, it is to be treated as the source of the applicable laws. It is to include order regulations, which in this case are established with regard to providing health safety as a considerable element of the public space, within the framework of which a governor accomplishes his tasks.

Within the area not regulated in the laws in force, a governor is entitled to issue order decrees, provided it is indispensable for the protection of health, life or assets, as well as to guarantee order, tranquillity and public safety[5]. While count-

[5] Article 60 Item 1 of the Act of 23 January 2009 on Voivodeship Governor and State Administration in Voivodeship (Journal of Laws 2017, Item 2234 as amended). See more: *Ustawa o wojewodzie i administracji rządowej w województwie. Komentarz*, red. M. Czuryk, M. Karpiuk, M. Mazuryk, Warszawa 2012, pp. 161–166; M. Karpiuk, *Status prawny terenowych organów administracji rządowej w sferze bezpieczeństwa publicznego*, [in:] *Prawo bezpieczeństwa publicznego*, red. M. Karpiuk, K. Walczuk, Warszawa 2013, p. 89. See more: *idem*, *Status prawny organów samorządu terytorialnego w sferze bezpieczeństwa publicznego*, [in:] *Prawo bezpieczeństwa…*, pp. 109–111; M. Czuryk, *Stanowienie aktów prawa miejscowego przez organy samorządu terytorialnego szczebla lokalnego i regionalnego*, [in:] *Akty normatywne i administracyjne*, red. M. Karpiuk, Warszawa 2009, pp. 130–137; M. Karpiuk, *Miejsce samorządu terytorialnego w przestrzeni bezpieczeństwa narodowego*, Warszawa 2014, p. 43; M. Czuryk, *Akty prawa miejscowego organów rządowej administracji niezespolonej*, [in:] *Niezespolona administracja rządowa*, red. M. Czuryk, M. Karpiuk, J. Kostrubiec, Warszawa 2011, p. 266; M. Karpiuk, *Akty prawa miejscowego samorządu terytorialnego*, [in:] M. Karpiuk, J. Kostrubiec, M. Paździor, K. Popik-Chorąży, K. Sikora, *Legislacja administracyjna*, Warszawa 2013, p. 114; N. Szczęch, *Przepisy porządkowe wydawane przez organy jednostek samorządu terytorialnego dla zapewnienia porządku, spokoju i bezpieczeństwa publicznego*, [in:] *Zadania i kompetencje samorządu terytorialnego w zakresie porządku publicznego i bezpieczeństwa obywateli, obronności oraz ochrony przeciwpożarowej i przeciwpowodziowej*, red. M. Karpiuk, M. Mazuryk, I. Wieczorek, Łódź 2017, pp. 90–97; M. Karpiuk, J. Kostrubiec, *Rechtsstatus der territorialen Selbstverwaltung in Polen*, Olsztyn 2017, pp. 96–97; J. Kostrubiec, *Podstawy teorii prawa w legislacji administracyjnej*, [in:] M. Karpiuk, J. Kostrubiec, M. Paździor, K. Popik-Chorąży, K. Sikora, *op. cit.*, pp. 41–48; L. Dubel, J. Kostrubiec, G. Ławnikowicz, Z. Markwart, *Elementy nauki o państwie i polityce*, Warszawa 2011, pp. 337–341. Geographical jurisdiction with respect to adopting local legal acts (including order regulations) in the case of governmental public administration does not necessarily cover the area

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ing premises justifying issuing an order decree, the legislator avoids superfluous casuistry so as not to omit goods that should be subject to protection, describing them in a general manner, however, not providing any hints as to what they actually refer to[6]. Therefore, one of the premises justifying issuing of such a decree is health protection.

At the same time, on the territory of a voivodeship or its part there cannot be any threat of epidemic, not to mention a state of epidemic. Firstly, a governor is to state the objective of the regulation and what are circumstances threatening the health safety, hence, whether preventive and anti-epidemic measures are supposed to be undertaken to minimise the effects of an epidemic, or whether preventive measures are supposed to be undertaken in the event of an epidemic risk, and consecutively, to take a final decision. In the event of an epidemic state, the epidemic is already spread, and in the event of an epidemic threat, there is merely a threat of an epidemic. A governor is the competent person to announce an epidemic threat or state, provided that an epidemic threat or an epidemic is present on the territory of one voivodeship. However, if such a threat encompasses a larger region, the competent person is a minister of health issues.

An epidemic state, pursuant to Article 2 Item 22 of the Act on Public Health, refers to a legal situation introduced in a given region in connection with the occurrence of an epidemic, which is aimed at undertaking legally provided preventive and anti-epidemic measures to minimise the effects of an epidemic, whereas an epidemic state, pursuant to Article 2 Item 23 thereof, is a legal situation introduced in a given region in connection with the risk of an epidemic, which is aimed at undertaking legally provided preventive measures. Both situations are characterised by various premises. In the former case, they are already present on the given territory on which people have been already infected or suffer from an infectious disease in a larger number than it was previously the case (or there are infections or infectious diseases involved which have not occurred before). In turn, in the latter case, there is an epidemic risk. An epidemic state can be, therefore, introduced as the first one, and if the undertaken legal measures fail to combat the epidemic, which occurs despite those measures being implemented, a governor may announce an epidemic state, however, only after officially ending the epidemic threat.

A governor announces an epidemic threat or state on the territory of the entire voivodeship or its part, depending on the scale, source and spread possibility of this threat. The adopted solution as regards the local scope of this decree should be deemed appropriate. A region is a sufficiently large territory, so there will not

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of the voivodeship, but the area of activity of these authorities. See: P. Szreniawski, *Pozycja prawna organów rządowej administracji niezespolonej*, [in:] *Niezespolona administracja…*, p. 21.

[6] M. Karpiuk, *Przepisy porządkowe jako szczególny rodzaj prawa miejscowego*, „Studia Iuridica Lublinensia" 2015, nr 4, DOI: http://dx.doi.org/10.17951/sil.2015.24.4.21, p. 25.

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always be a necessity to introduce the given measures in all its parts, thus, an epidemic threat or state may be announced only for its part. Restrictions, prohibitions, obligations, and orders should be applicable only on those territories where they are indispensable, hence, they should not refer to persons not living in a health threat zone.

In Article 46 Item 3 of the aforementioned Act, the legislator grants a governor an entitlement to announce an epidemic threat or state, and to impose an obligation to apply preventive vaccinations to persons other than legally bound to subject to such vaccinations against infectious diseases, other infections and infectious diseases referred to in the Annex thereof.

Such an obligation encompasses not merely applying a vaccination, but also applying all other measures related to this process, including qualification examinations, which are performed to exclude any contraindications related to an obligatory preventive vaccination. The necessity to conduct such an examination directly prior to applying a vaccination leads to a situation in which a refusal to participate in such an examination makes it impossible to perform the vaccination act[7].

Restrictions, prohibitions, obligations, and orders which a governor may introduce in a decree on announcing an epidemic threat or state on the territory of a voivodeship or its part is referred to in Article 46 Item 4 of the above-mentioned Act, including: 1) temporary limitation of a particular way of commuting, 2) temporary limitation or prohibition of turnover or application of the given objects or food products, 3) temporary limitation of functioning of particular institutions or work establishments, 4) prohibition of organising spectacles or gatherings, 5) obligation to perform the given sanitary measures if performing such measures is related to functioning of particular production manufacturing service and sales objects, 6) order to make real estate, residential and business units and other locations accessible as well as to provide vehicles for anti-epidemic measures envisaged by anti-epidemic plans, 7) obligation to conduct preventive vaccinations against infectious diseases; the group of persons subject to those vaccinations; kind of vaccinations – taking into account the spreading manners of infections and infectious diseases, as well as an epidemic situation on the given territory on which an epidemic threat or state has been announced. A governor may introduce all the measures referred to in Article 46 Item 4 thereof at the same time, as well as only some or one of them. However, they are to be adjusted to the given circumstances, taking into account the principle of necessity and proportion. In a less interferential manner, it is, therefore, impossible to re-establish a desired state with regard to health safety – the former principle, and in the case of introducing such kind of interferential measures, they are to be

[7] The Polish Supreme Administrative Court Judgement of 6 June, 2017, II GSK 2399/15, LEX No. 2341038; the Polish Supreme Administrative Court Judgement of 6 June 2017, II GSK 2398/15, LEX No. 2347675.

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consistent with the objective they serve for, by causing as little inconvenience to a recipient as possible, they must not be too painful, if it is possible to achieve this aim by applying gentler measures (in this situation, the latter measures are to be applied – pursuant to the principle of proportion).

The fact that a governor may introduce restrictions, prohibitions, obligations, and orders issued in a decree with regard to health safety in the event of announcing an epidemic threat or state supports the idea of regarding this legal act of local law as the one including order regulations, thus, it should be deemed an order decree. Such legal acts significantly interfere with the sphere of human freedom and rights, as well as citizens' rights. Therefore, they are to be issued with common sense, yet exclusively in the last resort, when other legal measures cannot counteract dangers or their effects.

Pursuant to Article 46 Item 5 thereof, a decree on an epidemic threat or state is announced immediately in a given official journal of laws, in accordance with the provisions on announcing normative acts, and it is to come into force on the day of its announcement. The local law acts issued by a governor are announced in a province official journal of laws[8]. Therefore, the aforementioned announcement is performed in a province official journal of laws. Despite the fact that the local representative of the Council of Ministers, pursuant to Article 46 Item 6 of the above-mentioned Act, is obliged to notify citizens about the obligations imposed on them within the given decree. This Act is to be performed in a manner commonly accepted in the given region. Hence, with regard to health safety, citizens are notified about the decree scope in two manners: by an announcement in a province journal of laws, and in another way enabling to broadcast this information to as many citizens as possible. In Article 46 Item 6 of the aforementioned Act, the legislator states that a governor is to notify "citizens" about appropriate obligations, nevertheless, this obligation should also concern other parties (not having the Polish citizenship), thus, everyone.

Pursuant to Article 47 Item 1 of the Act on Infections and Infectious Diseases, employees of medical entities, medical professionals, as well as persons with whom agreements on medical service provision were concluded, may be directed to work in order to counteract an epidemic. Other persons also may be directed for this kind of work, provided their referral is justified by the current needs of entities directing the operation of counteracting an epidemic. The occurrence of an epidemic does not automatically bring about an obligation to refer well-qualified persons to cooperate in anti-epidemic measures. Having the necessary knowledge on the needs within this scope, it is a governor who takes a decision as to whether

[8] Article 13 Item 1 of the Act of 20 July 2000 on Enacting Normative Acts and Other Legal Acts (Journal of Laws 2017, Item 1523).

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to enlarge the number of employees involved in the aforementioned measures, which is largely dependent upon the given circumstances.

Pursuant to Article 47 Item 2 of the Act on Infections and Infectious Diseases, referring to such a kind of work occurs on the basis of a decision. Thus, a governor specifies this obligation by indicating a particular person who is to fulfil it, which is possible due to an administrative act (a decision). A recipient of such a decision, which is an expression of governor's power, is to subject to such a decision, which does not mean that there are no means of appeal that can be undertaken.

Article 47 Item 3 of the above-mentioned Act includes a list of persons who have been excluded from the obligation to counteract an epidemic, provided there is an infection risk involved. Hence, the following persons are not subject to such a referral: 1) persons aged below 18 or aged 60, 2) pregnant women or persons involved in upbringing of their children aged up to 18, including single parents of children aged up to 18, 3) persons displaying full or partial incapacity for work, 4) the disabled and persons suffering from chronic diseases, 5) high-ranking administration officials, parliamentary deputies and senators of the Republic of Poland. The exclusion catalogue referred to in Article 47 Item 4 thereof is exhaustive, therefore, other persons not referred therein, in the event of an epidemic threat, are subject to the aforementioned obligation, provided they are directed to this kind of work.

A decision about such a referral which concerns working on the territory of a voivodeship in which a given person resides or works, is issued by a competent governor. Such competences are referred to in Article 47 Item 4 of the above-mentioned Act. A territorial competence of a governor is not determined by a residence of a person to be referred to work in the above case, but by a place of stay or employment, whereby a permanent place of residence is not required, as a temporary stay on the territory of a voivodeship on which an epidemic has occurred, is also taken into account.

Based on Article 47 Item 5 of the aforementioned Act, an appeal against such a decision may be legally submitted to a competent minister of health issues. In turn, an appeal against this decision may be brought to an administrative court. Nevertheless, in accordance with Article 47 Item 6 of the above-mentioned Act, means of recourse do not stop a decision from being implemented. In such a case, a given person will have to take up work consisting in counteracting an epidemic.

Pursuant to Article 47 Item 7 thereof, such a decision means a work obligation up to 3 months in a medical entity or another organisational unit, referred to in a decision. This provision explicitly points out the scope on which such an obligation may be imposed. A referred person is not entitled to avoid this obligation.

Pursuant to Article 47 Item 8 thereof, a current employer of such a person is obliged to grant an unpaid leave for the time specified in the decision. This period of time is included in the work period, upon which employees' entitlements are dependent. Such an employee is, therefore, not deprived of the above-mentioned

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entitlements due to the unpaid leave because of the decision issued by a governor. Hence, he is protected, and from the perspective of employees' entitlements his unpaid leave is regarded as a full-time job.

Pursuant to Article 47 Item 9 of the aforementioned Act, a medical entity or another organisational unit referred to in such a decision, are imposed an obligation to employ such a person for the time of accomplishing specific tasks related to counteracting an epidemic, however, for a period not exceeding the time provided for in a decision. A given entity should, therefore, conclude a job agreement with such a person, and not a civil-law agreement, which does not constitute a legal basis of employment.

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The Polish Supreme Administrative Court Judgement of 6 June 2017, II GSK 2398/15, LEX No. 2347675.

STRESZCZENIE

Jedną z publicznych sfer działania wojewody jest przestrzeń bezpieczeństwa zdrowotnego. Ochrona zdrowia, jako element tego bezpieczeństwa, jest tym obszarem, który wymaga zarówno odpowiedzialnych i skutecznych działań, jak i znacznych nakładów finansowych. Jednym z aspektów aktywności wojewody w przestrzeni bezpieczeństwa zdrowotnego jest zapobieganie oraz zwalczanie zakażeń i chorób zakaźnych u ludzi. W granicach właściwości miejscowej wojewoda w tym zakresie może ogłosić stan zagrożenia epidemicznego lub stan epidemii na obszarze całego województwa bądź jego części, wprowadzając przy tym ustawowo określone nakazy, zakazy czy też obowiązki.

Słowa kluczowe: wojewoda; bezpieczeństwo zdrowotne; choroby zakaźne