

LEGAL GUARANTEEING FOR PROVIDING SOCIALLY SIGNIFICANT MEDICAL SERVICES DURING MARTIAL LAW AND POST-WAR RECOVERY OF UKRAINE

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ABSTRACT

Objective: The purpose is define the perspective legal models for the formation of powerful healthcare sector in Ukraine capable to ensure timely provision of socially significant medical services in terms of the martial law and post-war recovery.

Method: The authors of the article have used such research methods: systematic analysis, method of deduction, formal and logical method.

Results: The authors have analyzed positive and negative aspects of co-payment mechanisms for the provided medical services, the possibilities of their application in Ukraine. It has been indicated that the receipt of highly specialized medical care by Ukrainians affected by the war requires the urgent creation of appropriate medical infrastructure. Such a task can be accomplished only due to the optimal combination of new tools for providing socially significant medical services, provision of financing within the sector and appropriate regulatory legal support.

Conclusions: The authors substantiated the need to improve legal regulation of public and private partnership considering the peculiarities of medical activity and specifics of public and private partnership projects in the healthcare sector. The authors made conclusions and formulated suggestions regarding the development and implementation of legal mechanisms of various forms of co-payment for medical services, public and private partnership to ensure the provision of socially significant medical services.

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GARANTIA LEGAL PARA FORNECER SERVIÇOS MÉDICOS SOCIALMENTE SIGNIFICATIVOS DURANTE A LEI MARCIAL E A RECUPERAÇÃO PÓS-GUERRA DA UCRÂNIA

RESUMO

Objetivo: O objetivo é definir a perspectiva dos modelos jurídicos para a formação de um poderoso sector da saúde na Ucrânia, capaz de garantir a prestação atempada de serviços médicos socialmente significativos em termos da lei marcial e da recuperação pós-guerra.

Método: Os autores do artigo utilizaram os seguintes métodos de pesquisa: análise sistemática, método de dedução, método formal e lógico.

Resultados: Os autores analisaram os aspectos positivos e negativos dos mecanismos de co-pagamento dos serviços médicos prestados, as possibilidades da sua aplicação na Ucrânia. Foi indicado que a recepção de cuidados médicos altamente especializados por parte dos ucranianos afectados pela guerra exige a criação urgente de infra-estruturas médicas adequadas. Tal tarefa só pode ser realizada devido à combinação óptima de novas ferramentas para a prestação de serviços médicos socialmente significativos, a prestação de financiamento no sector e o apoio jurídico regulamentar adequado.

Conclusões: Os autores fundamentaram a necessidade de melhorar a regulamentação legal das parcerias público-privadas considerando as peculiaridades da atividade médica e as especificidades dos projetos de parcerias públicas e privadas no setor da saúde. Os autores tiraram conclusões e formularam sugestões sobre o desenvolvimento e implementação de mecanismos legais de diversas formas de co-pagamento de serviços médicos, parcerias públicas e privadas para garantir a prestação de serviços médicos socialmente significativos.

Palavras-chave: lei marcial, recuperação pós-guerra, serviços médicos socialmente significativos, co-pagamento por serviços médicos, parceria pública e privada.

1 INTRODUCTION

There are specific challenges in the current extremely difficult conditions of repelling armed aggression in Ukraine for the health care system regarding its ability to provide medical care to all in need for it. As a result of the hostilities, a significant part of the property of health care institutions, equipment has been lost; human resources has been also damaged. However, millions of Ukrainians who have somehow suffered as a result of this war need and will increasingly need long-term highly specialized treatment and rehabilitation for the purpose of post-traumatic recovery of physical and mental health.



A separate factor that complicates the task of providing medical services to all victims is the significant financial limitations of the country's budget that is in a war status. However, efforts to hide the problem and postpone its solution in the nearest future may lead to its deepening and, as a result, to social tension and dissatisfaction of those who resisted armed aggression at the cost of their health.

Only few patients from Ukraine have the opportunity to receive free treatment and rehabilitation courses abroad at the expense of private benefactors, humanitarian funds and states that support Ukraine. The state must take care of the majority of its citizens who suffered from the war and that is the reason for taking urgent and effective steps towards adjusting the medical reform model, choosing the most optimal ways of responding to challenges and developing appropriate social and legal instruments.

However, it should be remembered that Ukraine, like any other country, cannot fully provide itself with the products and equipment necessary for its own health care systems. Therefore, all countries must work on ensuring the flow of vital medical supplies and equipment and on eliminating the disruptions in global supply networks, supporting people's health and well-being (Teremetskyi et al., 2020).

Considering the above, the actual area of scientific research is the analysis of perspective legal models for the formation of a powerful medical sector capable of ensuring the timely provision of socially significant medical services.

2 THEORETICAL REFRENTIAL

The basis for the authors' intelligence regarding the problems of legal guaranteeing for providing socially significant medical services was the research of legal and related areas conducted by scientists.

Thus, the research of Lamesawan, P., Silpcharu, T., & Wattanakomol, S. (2023) is valuable, since the scholars studied a fair method for evaluating employees in the sphere of manufacturing and services, as well as offered own formula of reducing the turnover rate of personnel and a fair performance of employees in manufacturing and services sectors in Thailand.

The system of guarantees of human rights regarding the provision of medical services has been revealed in the collective monograph under general edition of I. Chekhovska (2023) focused on the principles of protecting human rights in a social state.



O. Rohova (2022) in her work noted the peculiarities of the legal regime of the health care system of Ukraine in terms of the martial law. The publication by V. Teremetskyi and H. Muliar (2020) is focused on revealing the current state of legal provision for the implementation of the right to health care, identifying problems and determining areas for its renewal.

International experience of legal regulation of the relations in the health care sphere, which use private, state and mixed models of the organization and financing of the health care system has been studied in one of the publications by a group of Ukrainian scholars (Teremetskyi et al., 2019).

O. Soldatenko (2018) analyzed the issue of legal regulation of healthcare financing in Ukraine, including co-payment mechanisms. Problems and perspectives of introducing social health insurance were studied by I. Mishchuk and I. Vinnichuk (2019). The article of H. P. Harichandran (2023), due to the comprehensive research approach, uncovered prevalent medical insurance malpractices within the private healthcare sector of the UAE.

Financial, economic and organizational mechanisms of public and private partnership in the healthcare sector were studied by representatives of economic science such as M. Zabashtanskyi, I. Zub, R. Lomonos and I. Fenna (2022).

Certain aspects of legal provision of public and private partnership mechanisms in the healthcare sector of Ukraine were studied by: R. Shevchuk (2023); S. Petryk (2020); D. Turchak (2019); S. Klymenko, Z. Lashkul, N. Motovytsia and L. Yarova (2022).

3 METHODOLOGY

The research has been carried out on the basis of a review of the national regulatory legal framework, scientific sources, description and generalization of the spectrum of possible solutions to the problems that have arisen. A systematic analysis of the problem of legal guaranteeing for providing socially significant medical services during the period of post-war recovery in Ukraine has been conducted. Due to the used method of deduction, general characteristics of the public and private partnership have been considered in terms of the peculiarities of the interaction between the state and private sector in the field of providing socially significant medical services with singling



out the specifics of the healthcare sector. The formal and logical method has made it possible to analyze the legislation and to formulate suggestions for its improvement.

4 RESULTS AND DISCUSSION

Some suggestions in regard to a new model of medical care are being expressed in the course of the public dialogue that has begun. The new model will help to cope with the current unprecedented challenges, not leaving citizens and their families alone with their problems. The key task of the state is the rapid deployment of infrastructure for the provision of socially significant medical services. It can be fulfilled due to the combination of new tools of the organization and financing of the sector, appropriate regulatory legal support.

It is obvious that the state and local budgets alone will not be able to provide medical care to the ever-increasing number of those who need it. Therefore, the construction of modern medical infrastructure throughout the country in the shortest possible period can be carried out by combining a set of measures and quality management solutions. Various models of co-payment, as well as public and private partnership are used in global practices among the common instruments of influence on reducing the financial burden on the state and forming a powerful, high-quality medical sector in the shortest possible period of time.

4.1 PERSPECTIVE LEGAL MODELS OF ORGANIZING THE PROVISION OF SOCIALLY SIGNIFICANT MEDICAL SERVICES

Co-payment as an additional payment made by a patient for a medical service by covering the difference between its cost and the state tariff, fully fits into the declared main principle of the medical reform “the money follows patients”. At the planning stage of the reform in 2016, the co-payment mechanism was included in the draft Law on State Financial Guarantees for the Provision of Medical Services and Medicinal Products (Proekt Zakonu, 2017), which was rejected by the result of the public discussion.

There is currently the matter on the agenda that the state can give a part of the budget funds to private institutions belonging to patients within the framework of the state-guaranteed basic package of services and compensate a certain part of the cost of treatment and recovery, and the rest will be paid by patients. Such mechanisms of co-payment for services at private economic entities should be established by appropriate



amendments to the legislation. There is currently no unified medical space in Ukraine, patients cannot choose a physician from a private medical institution at state funds (except for perinatal care doctors – a therapist, pediatrician, family doctor).

An important step in the implementation of the project on creating a single medical space is the integration of the data about non-state providers of medical services into the electronic health care system. In accordance with the Resolution of the Cabinet of Ministers of Ukraine “Some issues of conducting economic activities within medical practice” No. 126, all economic entities that have received a license to conduct economic activities on medical practice are obliged to bring their activities into the compliance with the License conditions for conducting economic activities on medical practice (Postanova Kabinetu ministriv Ukrainy, 2022).

In particular, licensees under new changes undertake to: comply with the approved requirements for keeping forms of primary accounting documentation; to be registered in the Register of business entities in the healthcare sector of the central database of the electronic health care system; to ensure the work with the electronic health care system, in particular, entering primary accounting medical documentation, keeping records of medical services, managing medical information and using other functional capabilities of the electronic health care system, which are defined by legislation as mandatory in the process of carrying out medical economic activities on medical practice; to process personal data and other information about patients (namely, information about health status, diagnosis, existing limitations of daily functioning / life activities, information obtained during medical and / or rehabilitation examination of patients) in the electronic health care system in compliance with requirements of the legislation on personal data protection. The new conditions introduce the obligation of all health care institutions, regardless of the form of ownership, to keep basic medical records in the electronic health care system (Myronova, 2022: 145).

Private medical institutions get in this way the opportunity to join the Medical Guarantee Program and provide medical services under contracts with the National Health Service of Ukraine using co-payment mechanisms. Such an important step creates conditions, under which all providers of medical services play by the same rules that will lead to the development of fair competition in the interests of patients. However, the possibility of effective application of co-payment by patients is still restrained by the rule of the Art. 49 of the Constitution of Ukraine and the decision of the Constitutional Court



of Ukraine in case of free medical care, according to which “free medical care within state and municipal health care institutions is understood as complete provision of all medical services without any restrictions and exceptions to all citizens in the absence of any financial compensation by them in favor of the medical institution” (Rishennia Konstytutsiinoho Sudu Ukrainy, 2002).

Addressing international experience, O. Soldatenko (2018: 146) notes that “citizens in the Czech Republic (regardless of the functioning of insurance medicine) pay money for calling an ambulance, the first visit to a physician and for a stay in a hospital; there is co-payment for all medical services at the level of 15–25% in Latvia; the Constitution of Hungary guarantees citizens the right to free medical care (through health insurance), but they cover the cost of medicinal products and can pay for a visit to a narrow specialist without referring”.

When choosing a national model of co-payment for the provided medical services, it should be taken into account that any chosen co-payment mechanism creates associated problems. In particular, patients who do not have the funds to pay for expensive medical services will remain unprotected because of the absence of an appropriate health insurance system (solidarity or state). Therefore, co-payment is not a source of covering the costs of providing medical care or additional funds in any world country. Thus, co-payment, together with the introduction of waiting lists, is mostly used as a demand management tool, which restrains people’s need to receive certain services.

Issues of introducing co-payment for medical services are permanently initiated in the legal space of Ukraine. The Resolution of the Cabinet of Ministers of Ukraine approved the Action Plan for the Implementation of the Human Development Strategy for 2021-2023, which, in particular, foresees, within the framework of measures of transforming the health care financing system, “attraction of additional financial resources for the implementation of the medical guarantee program by developing a mechanism for the introduction of medical co-payment services, medicines and medicinal products that are included into the medical guarantee program, in terms of the level of service and convenience for patients, as well as the development of a road map for the implementation of medical insurance” (Rozporiadzhenniam Kabinetu Ministriv Ukrainy, 2021).

According to the Chairman of the Committee of the Verkhovna Rada of Ukraine on National Health, Medical Care and Medical Insurance M. B. Radutskyi, the issue of



introducing co-payment has been worked out several times within the framework of the Committee's working team, but so far there is no joint position with international partners. A pilot project on the implementation of co-payment in a certain city is currently being developed, on the basis of which it would be possible to sum up the results, evaluate the effectiveness and move forward (Ukraina skorehuie fokus medychnoi reformy, 2022).

Co-payment mechanisms, as well as the introduction of mandatory medical insurance, require appropriate detailed socio-economic justification, legal development taking into account the entire set of factors, needs and interests of society, which is related to the time resource, which the country currently does not have. It is also obvious that various forms of interaction between the public and private sectors can become popular and effective tools for the rapid deployment of a network of medical institutions of the required profile and for the fundamental improvement of their equipment. The necessary prerequisites for cooperation between the state and private sector in the healthcare sector in Ukraine have been laid down due to the reform of financing the health care system, in particular, the autonomy of state and municipal institutions and the transition to payment for the provided medical service.

4.2 LEGAL GUARANTEEING FOR PROVIDING SOCIALLY SIGNIFICANT MEDICAL SERVICES THROUGH PUBLIC AND PRIVATE PARTNERSHIP MECHANISMS

It is well-known that public and private partnership combines powers in order to implement socially important projects in various fields of economic activity throughout the whole country or on some territories of Ukraine (Teremetskyi et al., 2018: 448).

Application of various forms of public and private partnership is considered the best option for proper financial and technical equipment of health care facilities, given the limited budgetary and time resources of the state. R. Shevchuk (2023: 109) notes "the main task of partnership in any field is to combine the potential, resources and skills of partners in achieving the best financial and logistical results with maximum mutual benefit from such cooperation".

The areas of public and private partnership efforts are determined by the need for recovering, constructing and equipping medical institutions that will provide socially significant medical services in terms of post-war reconstruction of Ukraine. The attraction of funds from private investors, the transfer of part of the risks to a private partner, the



preservation of property in state ownership, the transfer of newly created and acquired objects within the framework of public and private partnership to state or municipal ownership, the rapid improvement of the quality and range of demanded medical services, ensuring a higher efficiency of activity than in case of such activity being carried out by a state partner without the involvement of a private partner should be noted among the key advantages of such cooperation.

The content of public and private partnership in accordance with the Law of Ukraine “On Public and Private Partnership” consists in cooperation between the state of Ukraine in the person of the relevant state agencies, which is implemented by the management of state-owned objects, local self-government agencies, the National Academy of Sciences of Ukraine, National sectoral Academies of Sciences (state partners) and legal entities, except for state and municipal enterprises, institutions, organizations (private partners), which is carried out on the basis of a contract in accordance with the procedure established by law and corresponds to the characteristics of state and private partnership defined by law (Zakon Ukrainy, 2020).

The purpose of legal regulation of public and private partnership is, among other things, to provide legal guaranteeing for providing priority socially significant services that are aimed at ensuring public interests and needs provided to an unlimited range of users (consumers) and / or the provision of which must be ensured by state authorities, local self-government agencies or state, municipal enterprises, institutions, organizations. The provision of services in the healthcare sector within the scope of public and private partnership is defined as socially significant services in accordance with the Art. 4.

The Law of Ukraine “On Public and Private Partnership” defines the organizational and legal principles of the interaction of public partners with private partners, the main principles of public and private partnership on a contractual basis, appropriate guarantees for both public and private partners, in particular: equality under the law; coordination of interests, prohibition of any discrimination of the rights, immutability during the entire term of the contract, determining a private partner on a competitive basis, fair distribution of risks associated with the execution of contracts.

The main forms of public and private partnership regulated by the legislation are: concession agreement; property management contract; agreement on joint activities; other contracts or agreements with elements of different contracts. The objects of the concession and other forms of public and private partnership can be: 1) existing, in



particular reproduced (through reconstruction, restoration, capital repair and technical re-equipment) state-owned objects belonging to the National Academy of Medical Sciences of Ukraine under the right of economic trust and transferred to state institutions (state-owned enterprises) of the National Academy of Medical Sciences of Ukraine with the right of operational management; 2) objects being created or newly built in accordance with a concession or other agreement concluded within the framework of public and private partnership.

The Law of Ukraine “On Concession” entered into force in 2019 by replacing the previous Law “On Concessions” (2020). It corrects previous shortcomings, in particular within the aspect of the legal status of the property of the concession object, which is relevant for concessions in the healthcare sector. The Law establishes clear rules regarding the ownership of objects that are created or used in the process of implementing a concession project. In particular, it is provided that the transfer to the concessionaire does not terminate the right of state or municipal ownership, because there is no transfer of ownership of the concession object, such objects are subject to return to the concessionaire after the termination of the concession agreement.

The scope of public and private partnership in the healthcare sector can be quite wide: design, construction, operation and management of the infrastructure of health care facilities; provision of medical services; development, production and distribution of new medicinal products (drugs, vaccines, etc.); new medical tools and equipment. However, full-fledged public and private partnership projects in the healthcare sector have not been implemented in Ukraine. Certain regional initiatives mainly concerned the repair of premises, the purchase of equipment, joint operation of existing facilities, where a private participant was given the opportunity to provide paid medical services. A positive example of cooperation between municipal and private health care institutions is Bilotserkivska Hospital No. 2 and Fastivska Central District Hospital, where patients have the opportunity to undergo a free CT scan of private centers located on the territory of these hospitals.

We can indicate the List of priority investment projects for the state until 2023 (Rozporiadzhennia Kabinetu Ministeriv, 2020) among the government initiatives in the area of public and private partnership in the healthcare sector, where potential objects for the implementation of public and private partnership in healthcare sector have been identified: construction of a modern general hospital on the basis of the Clinical



Emergency Medical Hospital in Lviv; construction of the emergency department of Poltava Regional Clinical Hospital named after M. V. Sklifosofskyi; creation of a radiological center within the National Cancer Institute in Kyiv.

The implementation of public and private partnership projects in the healthcare sector in Ukraine has its own characteristics and legal restrictions that prevent the spread of new forms of management. First of all, these are constitutional restrictions on the payment basis of services at state and municipal health care institutions, the completeness of the list of paid services provided at state and municipal health care institutions and higher medical educational institutions; prohibition of reducing the network of state and municipal health care institutions; a special structure of the subjects of relations, because the state partner must be represented either at the level of the Ministry of Health of Ukraine or local self-government agencies; the need to balance the social and commercial components of the project, etc.

V. Vlasova and I. Tarnovska (2021: 50) rightly complain that “an obstacle to the implementation of public and private partnership projects in medicine is the lack of long-term budget planning in this area. Due to the peculiarities of Ukrainian legislation, the concessionaire has no guarantees that in a few years the state will continue to pay for services provided to citizens based on economically justified rates”.

However, the current laws of Ukraine in general, which regulate legal relations of public and private partnership, do not take into account the distinct specificity of the healthcare sector. Foreign investors may also be repelled by the lack of transparency in the selection of winners, given that not all information may be open in the process of applying the public and private partnership procedure. The weak institutional capacity of both the state and potential private partners in project implementation is also the cause for concern.

One of the latest reviews of the International Finance Corporation (IFC) “Creating markets in Ukraine: diagnosis of the country’s private sector” has paid considerable attention to the issues of public and private partnership in the medical sphere, in particular, and the problems that may arise. Preliminary conclusions were made on the example of already implemented projects in the format of public and private partnership and concessions. The complexity of risk management, as well as insufficient experience of Ukrainian officials, in particular, in the ability to centrally monitor all public and



private partnership contracts, especially in such a complex field as healthcare has been determined among the problematic aspects (Creating Markets in Ukraine, 2021).

In view of the above, it is advisable to develop and adopt a special law and relevant by-laws in regard to public and private partnership in the healthcare sector, which can make it possible to regulate transparent and detailed rules, according to which investors will receive an interest in cooperation and guarantees for their property, and the state will be able to meet the acute needs in the provision of socially significant medical services and will have leverage to effectively control the relevant processes.

5 CONCLUSIONS

The relevant area of scientific research in the conditions of modern complicated challenges for Ukrainian society is the analysis of perspective legal models for the formation of a powerful medical sector capable to ensure timely and high-quality provision of socially significant medical services to victims of armed aggression.

Various models of co-payment, as well as public and private partnership are used in global practices among the spread tools of influence on the formation of a high-quality medical sector in the shortest possible period of time and on the reduction of the financial burden on the state. There is a clear specificity of public and private partnership projects in the healthcare sector, which requires special attention in Ukraine in view of the tendencies of medical reform, the priority social orientation of medical services and the sensitivity of the sector to socially significant events during the martial law and post-war recovery.

Considering the above, it is necessary to take into account the specified peculiarities and to plan further steps of legal guaranteeing the provision of socially significant medical services on solving the relevant tasks and challenges.



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