

**STATE-PRIVATE PARTNERSHIP IN THE FIELD OF MEDICAL SERVICES:
PRINCIPLES, FORMS AND SIGNS**

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Abstract

The article explores the features of legal regulation of public-private partnerships in medical services provision. The regulatory legal acts on public-private partnership in provision of medical services should be divided into groups: general and special. The concept of "public-private partnership in the provision of medical services" is proposed, its principles, classification, forms, signs and advantages of their implementation are clarified. The methodology of this study is based on the use of general scientific and special methods of cognition. Comparative legal and comparative methods were used in the study of legislation governing the development of legal relations in the medical services field. The formal logical method helped us to establish the legal structure of such partnerships. The results of this work allowed us to determine the legal problems of legislation that arise during the public-private partnership implementation in the medical services field and the prospects for their elimination. It analyzes the current stage of public-private partnership in the provision of the medical services in Ukraine and the positive experience of individual countries of the European Union and the world, which can bring the quality of their delivery to a higher European level.

Keywords

Healthcare system – Medical services – Public-private partnership – Principles – Forms – Signs

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Introduction

In world practice, the public-private partnership of healthcare plays an increasingly important role as a form of interaction between the state and private business. The healthcare system of Ukraine is characterized by a very low level of budget funding.

Thus, the total health expenditures in 2017 were 3.2% of Ukraine's gross income and decreased by 30% compared to 2016¹. For 2020, 115.9 billion UAH, or 2.6% of the gross domestic income, was allocated from the state budget for the Ministry of Health of Ukraine, of which 72 million UAH was allocated for the implementation of the program of state guarantees of medical services for the population².

Health care institutions, operating in conditions of limited resources and imperfect managerial and economic mechanisms, cannot ensure the quality of medical care, which requires the search for new legal tools and managerial decisions³.

In Ukraine, effective mechanisms, technologies and procedures have not been developed that would make it possible to fully realize the objectives of the state health policy. In addition, the lack of funding, the lack of adaptation of the laws of Ukraine to the implementation of public-private partnerships in healthcare and the lack of a unified approach regarding the ways of interaction between state and communal healthcare institutions and business have made this study relevant.

Emphasizes the relevance of this work that the specifics of public-private partnership projects in the field of medical services due to the priority of social orientation, the introduction of the second stage of medical reform in Ukraine, as well as the presence of positive foreign experience in medical services.

Methods

The research methodology is based on the use of general scientific and special methods of cognition. Comparative legal and comparative methods were used in the study of legislative acts regulating the development of public-private legal relations in the provision of medical services. The formal logical method was used to establish the legal structure of "public-private partnership in the provision of medical services." Methods of modeling, analysis and synthesis made it possible to identify the positive factors for the implementation of public-private partnerships in the provision of medical services, its principles, forms and signs, to identify the experience of foreign countries.

Literature Review

In this paper, we consider some aspects of the legal regulation of public-private partnerships in the provision of medical services and their role in establishing quality

¹ A. A. Karmazina, Health facilities and the incidence of the population of Ukraine in 2016. Statistical Bulletin. Kyiv. State Statistics Service of Ukraine. 2017.

² About the State budget of Ukraine for 2020: Law of Ukraine No 294 of 14 November, 2020. Information of the Verkhovna Rada of Ukraine. № 5. Art.31.

³ V. M. Lekhan y V. V. Volchek, "Study of basic factors of expenses associated with low quality of medical care", Collection of scientific papers of employees of the National Medical Academy of Postgraduate Education named after P. L. Shupik, num 4 (2015).

standards for the provision of medical care in the study of the concept of "health and human rights" taking into account foreign experience. In Ukraine, studies have already been conducted on certain issues of public-private partnerships and its use in the healthcare sector.

So, Sinyenko, N. O., Zagoriy, G. V., & Mokhnachov, S. I examined the possibilities and reality of solving the problems of e-medicine using public-private partnership technologies and indicated that the use of such technologies is one of the most important levers to improve the quality of delivery medical assistance to the population of Ukraine⁴.

Kravchenko, V.V. conducted an analysis of the activities of the system of consultative and diagnostic centers and substantiated the feasibility of their transition to the principles of public-private partnership⁵. Kurdil, N.V. studied the prospects of a public-private partnership for the development of infrastructure of emergency medical facilities⁶. Goyda N.G., et.all., by analyzing the regulatory framework on public-private partnerships, identified the main problems that impede its successful implementation in the healthcare sector. The authors attributed to such problems: high financial risks associated with the presence of short (annual) budget cycles and the annual approval of state and local budgets⁷.

The problems of using the legal mechanism of healthcare development on the basis of public-private partnerships is relevant for foreign scientists and practitioners. For example, Al-Hanawi, MK, & Qattan, A.M. examined certain issues of providing medical care in Saudi Arabia, studied the problems faced by health care providers and officials of ministries, analyzed the experience of modernizing health care in the United Kingdom in order to make the practical feasibility a combination of public services with market ideals⁸.

Yang, J., et.all. consider the principles of public-private partnerships in healthcare to be the best approach in the Chinese market to narrow the gap medical resources and improving the efficiency of medical institutions⁹. Espigares, J., & Torres, E. H. examined public-private partnerships for health services as an alternative to the provision of goods and services by the government¹⁰.

⁴ N. O. Sinyenko; G. V. Zagoriy & S. I. Mokhnachov, "Features of e-medicine introduction in the conditions of public-private partnership", *Medical Informatics and Engineering*, num 4 (2017).

⁵ V. V. Kravchenko, "Analysis of the system of consulting and diagnostic centers in Kyiv and the feasibility of its transition to the principles of public-private partnership", *Economics and Law of Health*, num 2 (2017).

⁶ N. V. Kurdil, "Public-private partnership in healthcare in Ukraine: prospects for the rapid development of the infrastructure of emergency medical facilities", *Emergency medicine*, num 2 (2013).

⁷ N. G. Goyda; N. V. Kurdil & V. V. Voronenko, "Regulatory and legal support of public-private partnership in health care of Ukraine", *Zaporozhye Medical Journal*, num 5 (80) (2013).

⁸ M. K. Al-Hanawi & A. M. Qattan, "An Analysis of Public-Private Partnerships and Sustainable Health Care Provision in the Kingdom of Saudi Arabia", *Health services insights*, num 12 (2019).

⁹ J. Yang; L. Song; X. Yao; Q. Cheng, Z.; Cheng and K. Xu., "Evaluating the Intention and Behaviour of Private Sector Participation in Healthcare Service Delivery via Public-Private Partnership: Evidence from China", *Journal of Healthcare Engineering*, num 1-13 (2020)

¹⁰ J. L. N. Espigares & E. H. Torres, Public and private partnership as a new way to deliver healthcare services. In XVI Encuentro de Economía Pública: 5 y 6 de febrero de 2009: Palacio de Congresos de Granada. 2009.

Kosycarz, E. A., et.all. explored options for alternative collaboration between the private and public sectors, for example, joint ownership of a hospital by private and public partners. The authors point out that there are serious obstacles to the development of public-private partnerships in Poland, such as short-term contracts with state payers and a very low level of financing for health services.¹¹

Thus, the need to further study the problems of legal regulation of public-private partnerships in the provision of medical services and its effectiveness is an urgent research topic, both in Ukraine and in the world.

Results and Discussions

Health is the primary cause of normal human life, an integral indicator of the success of society. Article 49 of the Constitution of Ukraine states that everyone is guaranteed the right to protection of health, medical care and medical insurance (Law of Ukraine No. 254k / 96 of 28 June, 1996)¹². In accordance with the provisions of the Law of Ukraine "Fundamentals of Ukrainian legislation on health care", the category "health" is defined as a state of complete physical, mental and social well-being, and not just the absence of diseases and physical disabilities (art.3 Law of Ukraine No. 2801 -XII of 19 November, 1992)¹³.

WHO defines the definition of "health care system" as the aggregate of all organizations, institutions and resources whose main purpose is to improve health. The functioning of the healthcare system requires human resources, financial resources, information, equipment and materials, transport, communications, as well as general management and leadership (Order of the Cabinet of Ministers of Ukraine of 31 October, 2011 No. 1164-r.)¹⁴.

The Law of Ukraine "Fundamentals of Ukrainian legislation on health care" proclaims that health care is a system of measures carried out by state authorities and local self-government bodies, their officials, health care institutions, individual entrepreneurs who have received a license to carry out business activities in medical practice, medical and pharmaceutical workers, public associations and citizens with the aim of preservation and restoration of physiological and psychological functions, optimal working capacity and social activity of a person with the maximum biologically possible individual life expectancy (art.3 Law of Ukraine No. 2801-XII of 19 November, 1992)¹⁵.

In the functioning of the health system, the potential and rationality of this system are important, which, in accordance with Health 2020 in the European Region, is to

¹¹ E. A. Kosycarz; B. A. Nowakowska & M. M. Mikołajczyk, "Evaluating opportunities for successful public-private partnership in the healthcare sector in Poland", *Journal of Public Health*, num 27 (2019): 1-9.

¹² Constitution of Ukraine: Law of Ukraine No 254k/96 of 28 June, 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

¹³ Fundamentals of Ukrainian legislation on health care: Law of Ukraine No. 2801-XII of 19 November, 1992. Information of the Verkhovna Rada of Ukraine.1993. № 4. Art. 19

¹⁴ On approval of the Concept of the National Program "Health 2020: the Ukrainian Dimension": Decree of the Cabinet of Ministers of Ukraine No. 1164-p of October 31, 2011. Information of the Verkhovna Rada of Ukraine. No. 90. Art. 3273.

¹⁵ Fundamentals of Ukrainian legislation on health care: Law of Ukraine No. 2801-XII of 19 November, 1992. Information of the Verkhovna Rada of Ukraine.1993. № 4. Art. 19.

improve its functioning and reduce costs by increasing the volume of investments attracted to implement measures to improve public health¹⁶.

The Constitution of Ukraine proclaims that health protection is ensured by state financing of relevant socio-economic, health and wellness and preventive programs, the state creates conditions for effective and affordable medical care for all citizens; medical assistance in state and municipal healthcare institutions is provided free of charge; the existing network of state and communal healthcare institutions cannot be reduced; the state promotes the development of medical institutions of all forms of ownership¹⁷.

So, in Ukraine, the public health system is provided by state, communal and private medicine and is characterized by the development of public-private relations. Depending on the form of ownership, healthcare institutions are formed and operate as state, communal, private or based on a mixed form of ownership.

The expediency of the active development of public-private relations in the health sector is also indicated by scientific research. Pidgaiets S. & Sitash T. note that each country modernizes the health care system and financing system, depending on a number of initial parameters: 1) the size of the country's budget, 2) possible health care costs, 3) the availability of infrastructure (medical facilities and their technical provision, qualified personnel, technologies), 4) the state of the incidence of the population, 5) the general system of social protection of the population, 6) the historical background of the development of the health system¹⁸. The main factors in the development of public-private relations in the health sector is the low level of material and technical base of medical institutions; lack of modern medical diagnostic equipment requires huge investments¹⁹.

The cost of medical care due to morbidity is 47.9%, non-medical expenses (loss of income due to morbidity and premature mortality) are 52.1%²⁰. Pidgaiets S. Sitash T. determined that the budget allocated to the protection sector is mainly used to finance institutions and staff, and about 70% of the funds are spent on the remuneration of medical personnel, which is low and independent in this area of health on the quality of service. However, government guarantees of free medical services are declarative in nature, which reduces the availability of free medical care²¹.

Vyalkov, A.I. Kucherenko, V.Z., & Reisberg B.A. indicate that local governments to which health care institutions are represented by their representatives determine the forms and methods of organizing the treatment process, determine pricing policies and directions of investments from sources of the territorial community.

¹⁶ On approval of the Concept of the National Program "Health 2020: the Ukrainian Dimension": Decree of the Cabinet of Ministers of Ukraine No. 1164-p of October 31, 2011. Information of the Verkhovna Rada of Ukraine. No. 90. Art. 3273.

¹⁷ Constitution of Ukraine: Law of Ukraine No 254к/96 of 28 June, 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

¹⁸ S. Pidgaiets & T. Sitash, "Problems and prospects of public-private partnership in health protection system", Development economics, num 3(63) (2012).

¹⁹ B. A. Nissan; A. N Prokinova & N. M. Zaika, "From the international experience of using public-private partnerships in modern health care", Problems of social hygiene, health care and history of medicine, num 1 (2012).

²⁰ V. V Lazoryshynets et al., State management of health care of Ukraine: monograph. K. 2014.

²¹ S. Pidgaiets & T. Sitash, "Problems and prospects of public-private partnership in health protection system", Development economics. num 3(63) (2012)

And all this is viewed through the prism of the targeted or inappropriate use of the funds of a healthcare institution. Any deviation from financial expenses according to the estimate is treated as an offense²².

However, the development of public-private partnerships in healthcare has the potential to eliminate inequalities in the provision and access to public services throughout the world, ensuring targeted use of resources²³. An important point of view of scientists is also that the interaction of state authorities and the private sector in the healthcare system will allow for the implementation of socio-medical projects in a quality and timely manner, which, in turn, will improve the quality of the provision of medical services to the population and increase the level of management, will contribute to effective development state-owned medical facilities²⁴.

We note that the experience of developed countries shows that the total saving of public resources due to public-private partnerships in healthcare is approximately 10% compared to when the state independently provides medical services to the population²⁵. Thus, the implementation of public-private partnerships in the field of healthcare will allow combining the means and efforts of public and private investors in achieving a socially significant goal - improving the quality and accessibility of medical care to the population²⁶.

There is another point of view of scientists that, although public-private partnerships have become commonplace in the health sector, evidence of their effectiveness is limited, and in cases where the products or services provided by a private partner are harmful to health Conflicts of interest can be difficult to overcome²⁷. From our point of view, realizing projects of a sovereign-private partnership in the field of medical services, we'll need to be more efficient and effective. to take care of a healthy population.

Three groups of countries are distinguished by the intensity of the introduction of public-private partnership mechanisms in foreign countries Renda A. and Schrefler L. The first group is "economically developed countries", such as the UK, Germany, France, Ireland and Italy, the USA, Japan, Singapore, Canada. In the above-mentioned countries, the regulatory framework has already been quite clearly formed, which allows the use of the mechanism of public-private partnership in many areas. The second group is "intermediate countries", the spread of public-private partnerships in certain areas is limited, due to the imperfection of the current legislation (Spain and Portugal). The third - "a group of latecomers" - these are countries in which the use of public-private partnerships is at an initial stage (Luxembourg, Greece, Norway, Belgium, Sweden). Renda, A. & Schrefler L. also distinguish countries with different political and economic

²² A. I. Vyalkov; V. Z. Kucherenko & B. A. Reisberg, Management and economics of health care. Moscow. 2009.

²³ J. Gideon & E. Unterhalter, "Exploring public private partnerships in health and education: a critique", Journal of International and Comparative Social Policy, num 33: 2 (2017)

²⁴ S. Pidgaiets y T. Sitash, "Problems and prospects of public-private partnership in health protection system", Development economics. 3(63) (2012)

²⁵ I. V. Kuznetsov, "Foreign experience of public-private partnership (USA, Europe, Canada)", Economic sciences, num 8 (93) (2012).

²⁶ V. V. Kravchenko, "Analysis of the system of consulting and diagnostic centers in Kyiv and the feasibility of its transition to the principles of public-private partnership", Economics and Law of Health, num 2 (2017).

²⁷ L. A Parker; G. A. Zaragoza & I. Hernández-Aguado, "Promoting population health with public-private partnerships: Where's the evidence?", BMC Public Health num 19 (2019).

characteristics as a separate “special group”. This includes the countries of Central and Eastern Europe, where for the implementation of public-private partnerships, the government of these states faces a lot of problems, namely: 1) the lack of qualified specialists, 2) the underdeveloped capital market, 3) insufficient analytical preparation of project organization and others²⁸.

In Ukraine, public-private partnerships in the provision of medical services are represented by projects aimed primarily at developing the infrastructure of healthcare facilities. Most often, partnership facilities become powerful multidisciplinary hospitals with high-tech units in their structure²⁹. In France and Italy, public-private partnerships are distributed in the form of a concession³⁰. In China, the system of public-private partnerships has significant potential for use, especially because of its forms such as concessions and contracts³¹.

One of the world leaders among countries that are actively implementing public-private partnerships is the United Kingdom. The main area of development of public-private partnerships in the UK is the construction of hospitals, educational institutions, as well as military infrastructure. The most popular form of public-private partnership in the UK is the “Private Finance Initiative”. Its features are: the availability of consideration of all transactions on the part of improving the living standards of the population, and not on the part of the emergence of new assets in the state; distribution of powers between the state and business (the private sector assumes long-term obligations for servicing assets, and the state - a condition for ensuring constant demand for a particular product or service); risk distribution between the private and public sectors³².

Tkachova, N.M. indicates that public-private partnership projects of individual countries (Sweden, Great Britain, Germany, Australia) in the field of healthcare were implemented on a long-term basis under the obligation of a private investor not to create artificial restrictions on the availability of medical care. They included the design, construction, reconstruction, modernization and management of healthcare facilities, the integrated provision of primary medical care, emergency and certain types of specialized medical care to the population of a certain region (region), the provision of clinical and infrastructure services. The effect of the implementation of these projects was to reduce budget costs for the maintenance of health facilities while significantly reducing the cost of medical services and shortening the waiting time for diagnostics and treatment³³.

²⁸ A. Renda y L. Schrefler, Public Private Partnerships: National Experiences in the European Union. Briefing note v IP/A/IMCO/SC/2005-160 governed by the provisions of Framework Service Contract IP/A/IMCO/FWC/2005- 33. URL: euro2005.inform/news/11/p7273

²⁹ N. V. Kurdil, “Public-private partnership in healthcare in Ukraine: prospects for the rapid development of the infrastructure of emergency medical facilities”, *Emergency medicine*, num 2 (2013).

³⁰ A. I. Kredisov & A. O. Belous, “Public-private partnership: world experience and its use in Ukraine”, *Ukraine economy*, num 2 (651) (2016).

³¹ O. O. Shutava; V. V. Pobirchenk & M. O. Grishchenko, Foreign experience of public-private partnership and the possibility of its adaptation in Ukraine. *Economics: theory and practice*, num 1 (2015).

³² I. S. Bila & E. I. Illichova, “World experience of state-private partnership”, *Global and national economic problems: electronic scientific professional publication*, num 21 (2018).

³³ N. M. Tkachova, “Directions of reforming state policy in the field of health care”, *Investment: Practice and Experience*, num (8) (2018).

The prospects for introducing a public-private partnership in Ukraine in the provision of medical services in the context of medical reform are as follows: 1) a medical guarantee program will clearly distinguish between medical services covered by state guarantees and paid services, through which a private partner will be able to compensate for the investments made; 2) the autonomy of healthcare institutions allows the introduction of such forms of public-private partnerships as concession and joint activities, and provides an opportunity for autonomous institutions to become participants in public-private partnerships on the side of the public partner; 3) “local incentive” programs (at the expense of local budgets) can become an additional source of compensation for investor costs to stimulate him to participate in public-private partnership projects³⁴.

In Ukraine, the system of legal acts on public-private partnerships in the field of medical services can be divided into two groups: general and special. The first group includes the Constitution of Ukraine, the Civil Code of Ukraine, and the Commercial Code of Ukraine. The second group includes the Laws of Ukraine: “On Public-Private Partnership”, “Fundamentals of the Ukrainian Legislation on Health Care”, “On Concessions”, “On Financial Leasing”, as well as by-laws and regulations, for example, decrees and orders of the Cabinet of Ministers of Ukraine and orders of the Ministry of Health of Ukraine. Let's consider some of them.

Thus, the Law of Ukraine “On Public-Private Partnerships” defines the legal framework for interaction between public partners and private partners and the basic principles of public-private partnerships on a contractual basis (Law of Ukraine of 01 July, 2010, No. 2404-VI). The Law of Ukraine “On Public-Private Partnerships” determines that one of the areas of application of public-private partnerships is healthcare, as well as the provision of educational and health services³⁵.

So, public-private partnerships can be applied in the provision of medical services. During medical service is a useful activity of a service provider, which is aimed at meeting the health needs of an individual. This service is aimed at diagnosing, treating or preventing of a disease, rehabilitation, and providing medical care related with pregnancy, childbirth and is subject to licensing and having a cost meaning³⁶.

The provisions of the Law of Ukraine “On Public-Private Partnership” in the field of healthcare provide for the performance of such functions as design, financing, construction (reconstruction, modernization), restoration of operation, search, maintenance and more. In most infrastructure projects, the provision of medical services to a private partner does not delegate the right to provide medical services, thus, the volume of state guarantees in health care does not change. In Ukraine e additional agreements of the state-private partnership in the sphere of medical services.

So, in 2018, the agreement on power-private partnership was signed for the government of Kyiv and the Moscow state administration and the International Finance

³⁴ G. Ilik; I. Litovchenko; M. Slobodnichenko; L. Pytel & N. Korchak-Hib., Guidelines for the implementation of public-private partnership projects in the field of health care. Kyiv. Ministry of Health of Ukraine. 2018.

³⁵ On Sovereign-Private Partnership: Law of Ukraine No. 2404-VI of 01 July, 2010. Information of the Verkhovna Rada of Ukraine. № 40. Art. 524.

³⁶ O. Shevchuk; V. Maryniv; Y. Mekh; O. Shovkopljas & O. Saichuk, “Aspects of legal regulation of the provision of medical services”, Amazonia investiga, issue 9, num 27. (2020).

Corporation (IFC). Such technology and infrastructure are aimed at business and low-level medical mortgages in the metro station Kyiv, an addition to the current medical possession and industrial technology. The public-private partnership model that is being implemented as part of this project is DBFM. DBFM provides for the design, construction, equipment, routine operation and potential clinical services of medical institutions³⁷. The second stage of medical reform is being introduced in Ukraine, in which the principle “money follows the patient” will be implemented; it will be introduced at all levels of medical care. Since April 1, 2020, the implementation of the Medical Safeguards Program has begun, which includes 6 types of medical care: 1) primary, 2) specialized; 3) outpatient; 4) hospital; 5) emergency; 6) palliative and rehabilitation, as well as reimbursement of medicines (Law of Ukraine of 19 October 2017, No. 2168-VIII)³⁸. Therefore, when applying a public-private partnership project in the field of medical services, the following should be taken into account: 1) the autonomy of healthcare institutions; 2) the planned transition to the financing of medical services, depending on the types of medical care; 3) the requirements of the National Health Service of Ukraine for providers of medical services for the population; 4) the processes of the formation of hospital districts and others³⁹.

A single understanding of the term “public-private partnership in the provision of medical services” is not defined in scientific sources, nor is it provided in regulatory legal acts. Thus, the Law of Ukraine “On Public-Private Partnership” defines the definition of “public-private partnership” as cooperation between the state of Ukraine, the Autonomous Republic of Crimea, and territorial communities represented by the relevant state bodies. According to the Law of Ukraine “On the management of state property”, such cooperation is carried out by managers of state property, local authorities, the National Academy of Sciences of Ukraine, national industrial 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 an agreement, and meets the signs of a public-private partnership⁴⁰. Scientific sources define both narrow and broad concepts of “public-private partnership”. Thus, the definition of “public-private partnership” in the broad sense should be understood as public-private partnership, defining it as constructive cooperation of the state, business entities and civil institutions in economic, political, social, humanitarian and other spheres of public activity for the implementation of socially significant projects based on the principles of prioritizing the interests of the state, its political support, the consolidation of the resources of the parties, the effective distribution of risks between them, equality and transparency of relations to ensure the continued development of society⁴¹.

³⁷ V. I. Borsch, “Public-private partnership as a guarantee of innovative development of the national healthcare sector”, Bulletin of Zhytomyr State Technological University. Series: Economics, Management and Administration, num 2 (88) (2019).

³⁸ About the powers of financial guarantees of medical services for the population: Law of Ukraine No. 2168-VIII of 19 October, 2017. Information of the Verkhovna Rada of Ukraine. 2018.No. 5. Art. 3.

³⁹ G. Ilik; I. Litovchenko; M. Slobodnichenko; L. Pytel & N. Korchak-Hib, Guidelines for the implementation of public-private partnership projects in the field of health care. Kyiv. Ministry of Health of Ukraine. 2018.

⁴⁰ On Sovereign-Private Partnership: Law of Ukraine No. 2404-VI of 01 July, 2010. Information of the Verkhovna Rada of Ukraine. № 40. Art. 524.

⁴¹ K. V. Pavlyuk & S. M. Pavlyuk, “The essence and role of public-private partnership in the socio-economic development of the state”, Scientific works of Kirovohrad National Technical University. Economic Sciences, num 17 (2010)

From our point of view, public-private partnership in the field of medical services is a form of interaction between the state and the private sector, which is based on an agreement that has the signs of a public-private partnership, and provides for co-financing and sharing of risks between them in case of implementation and provision of medical services to the population both by state and municipal bodies, and by institutions and healthcare organizations.

Based on the provisions of the Law of Ukraine "On Public-Private Partnerships", the main participants in public-private partnerships in the provision of medical services are public and private partners. State partners are the State of Ukraine, the Autonomous Republic of Crimea, territorial communities represented by relevant state bodies, and local self-government bodies. Private partners are legal entities, except for state and municipal enterprises, or individuals - entrepreneurs.

In the legal literature, there are two approaches to understanding the term "partnership": (1) as cooperation on the implementation of joint projects between public and public authorities and private individuals, drawn up in the form of a contract, or (2) partnership as a more comprehensive design, with The contract is optional⁴². According to Znamensky G. public-private partnerships (public-private partnerships) should be considered as a generalized concept for various forms of partnership, while the author believes that "the range of specific forms of partnership provided for by the Commercial Code of Ukraine is wider than which follows from the content of the now widespread concept of "public-private partnership"⁴³.

We support the approach in which the implementation of a public-private partnership in the provision of medical services necessarily requires the execution of a contract, and this document must comply with the signs of a public-private partnership. An agreement between public-private partnership participants in the provision of medical services must comply with the characteristics of a public-private partnership. These include: 1) the creation and / or construction (new construction, reconstruction, restoration, overhaul and technical re-equipment) of a public-private partnership facility and / or management (use, operation, maintenance) of such an object; 2) the duration of the relationship (from 5 to 50 years); 3) transfer of a part of the risks to the private partner in the process of implementing public-private partnerships; 4) making a private partner invest in a public-private partnership⁴⁴. The list of signs of public-private partnerships in the provision of medical services in scientific sources is determined differently. So, Uzunov F.V. defines the following features of public-private partnerships: 1) they support the need to ensure higher technical and economic indicators of performance than if it was implemented by a public partner without involving a private partner; relationship duration from 5 to 50 years; 2) transfer of a part of the risks to the private partner in the process of implementing public-private partnerships; 3) making a private partner invest in public-private partnerships from sources not prohibited by law⁴⁵.

⁴² I. Kosach & A. Degtiarov, "Development of public-private partnership in conditions of government decentralization in Ukraine", Public administration: improvement and development, 3. URL: <http://www.dy.nayka.com.ua/?op=1&z=1589>.(2020)

⁴³ G. Znamensky, "Public-private partnership: Ukrainian version", Legal Bulletin of Ukraine, num 39 (2009).

⁴⁴ On Sovereign-Private Partnership: Law of Ukraine No. 2404-VI of 01 July, 2010. Information of the Verkhovna Rada of Ukraine. № 40. Art. 524.

⁴⁵ F. V. Uzunov, "Classification of forms of public-private partnership", Investments: practice and experience, num 17 (2013).

Panova T.V. indicates that a private partner undertakes to provide services in accordance with the requirements established by the state, as well as to maintain existing assets in good condition, to carry out the necessary modernization or to create new assets that are necessary to maintain the proper quality and scope of medical services⁴⁶. From our point of view, the following should be attributed to the signs of public-private partnership in the provision of medical services: 1) after the expiration of the contract in the provision of medical services, the property should remain in state ownership; 2) the contract in the provision of medical services must be concluded for 5-50 years; 3) a private partner in the provision of medical services is selected on a competitive basis; 4) transfer of a part of the risks to the private partner in the provision of medical services in the process of implementing such a partnership; 5) the right to provide medical services is not delegated to a private partner, that is, the volume of state guarantees in health care does not change.

We note that according to the provisions of the Law of Ukraine “On Amending Certain Laws of Ukraine regarding the Removal of Regulatory Barriers for the Development of Public-Private Partnerships and the Promotion of Investments in Ukraine”, the conclusion of contracts outside the requirements of the Law of Ukraine “On Public-Private Partnerships” is a violation of the law on these issues (Law of Ukraine of 24 November 2015 No. 817-VIII)⁴⁷ and in fact the form of such an agreement is not the subject of public-private partnership. This is due to the fact that the forms of public-private partnerships are defined by the Law of Ukraine "On Public-Private Partnerships" as: 1) a concession agreement; 2) property management contract; 3) an agreement on joint activities; 4) other contracts⁴⁸. World practice defines several constructions of concession relations: 1) build - operate - transfer (WTO), construction - management - transfer; 2) build - transfer - operate (WTO),; 3) build - own - operate (BOO); 4) build - own - operate - transfer (BOOT); 5) buy - build – operate (BBO). The most popular concession scheme is BOO⁴⁹.

When providing medical services in Ukraine using public-private partnerships, the forms are a concession agreement and an agreement on joint activities. The most common is a concession agreement. The appropriateness of using this form in the provision of medical services is due to the fact that the general goal of the participants' activity can be either commercial or non-commercial, not related to profit. The latter corresponds to the profile of joint ventures with state or municipal healthcare institutions, which are often non-profit organizations. The core functions of health facilities are the functions of providing medical care and medical services. Non-core (related functions) are catering, payment of energy and utilities, cleaning, maintenance of equipment and premises, maintenance of communications⁵⁰.

⁴⁶ T. V. Panova, The experience of developed European countries in the use of forms and models of PPP in health care. Economics and management of the national economy. 2015.

⁴⁷ On Amendments to Certain Laws of Ukraine on Elimination of Regulatory Barriers to the Development of Public-Private Partnerships and Stimulation of Investments in Ukraine: Law of Ukraine № 817-VIII of November 24, 2015. Information of the Verkhovna Rada of Ukraine. 2016, № 10, Art.97.

⁴⁸ On Sovereign-Private Partnership: Law of Ukraine No. 2404-VI of 01 July, 2010. Information of the Verkhovna Rada of Ukraine. № 40. Art. 524.

⁴⁹ K. Stepanov, “Public-private partnership in the maritime sector: world experience and perspectives for Ukraine”, Economy and state, num 6 (2017).

⁵⁰ Y. Shevchuk, “Development of public-private partnership as part of improvement of healthcare system funding”, Economic Bulletin of the University, num 1(33) (2017).

From our point of view, it is advisable, in most cases, to use public-private partnerships in the provision of medical services for non-core functions of health care institutions.

Consider the principles of public-private partnership in the provision of medical services. The Law of Ukraine “On Public-Private Partnership” defines the principles of public-private partnership, namely: 1) equality before the law of public and private partners; 2) the prohibition of any discrimination of the rights of public or private partners; 3) the coordination of the interests of public and private partners in order to obtain mutual benefits; 4) ensuring a high efficiency of activities than in the implementation of such activities by a state partner without involving a private partner; 5) invariability during the entire term of the contract concluded in the framework of public-private partnership, the purpose and ownership of objects in state or communal ownership, transferred to a private partner; 6) recognition by public and private partners of the rights and obligations concluded under the public-private partnership agreement; 7) fair distribution between public and private partners of the risks associated with the execution of contracts; 8) determination of a private partner on a competitive basis⁵¹.

The Law of Ukraine “Fundamentals of the Ukrainian Legislation on Health Care” proclaims the principles of healthcare: 1) the principle of priority for healthcare; 2) the principle of observing the rights and freedoms of man and citizen in the field of healthcare and the provision of state guarantees related to them; 3) the principle of equality of citizens in the context receiving medical care; 4) the principle of compliance with the objectives and level of development of society; 5) the principle of focus on modern health standards; 6) the principle of the development of self-government of institutions and the independence of health workers on a legal and contractual basis.⁵²

Pavlyuk, K.V. & Pavlyuk S.M. point to such principles of public-private partnerships as: 1) guaranteed sources of partners' resources; 2) economic parity, that is, the focus of resources for the implementation of public-private partnership projects that provide the maximum economic or social effect; 3) the responsibility of the parties to public-private partnerships in compliance with the contractual framework for cooperation and the achievement of the ultimate goal; 4) the completeness of disclosure of information about the implementation and the consequences of public-private partnerships⁵³.

Martyakova O.V. & Trikoz I.V. point to the following principles of public-private partnerships in the healthcare sector: 1) equal distribution of risks between partners; 2) budget savings; 3) the innovative development of domestic medicine in order to provide patients with quality medical services; 4) the formation of a mechanism of interaction between the state and business structures based on voluntary and mutually complementary partnerships; 5) obtaining economic and social effects; 6) the development of innovative forms of project management; 7) stimulation of entrepreneurship and demand; 8) the formation of an effective regulatory framework for the regulation of

⁵¹ On Sovereign-Private Partnership: Law of Ukraine No. 2404-VI of 01 July, 2010. Information of the Verkhovna Rada of Ukraine. № 40. Art. 524.

⁵² Fundamentals of Ukrainian legislation on health care: Law of Ukraine No. 2801-XII of 19 November, 1992. Information of the Verkhovna Rada of Ukraine. 1993. № 4. Art. 19.

⁵³ K. V. Pavlyuk & S. M. Pavlyuk, “The essence and role of public-private partnership in the socio-economic development of the state”, Scientific works of Kirovohrad National Technical University. Economic Sciences, num 17 (2010).

relations of partners; 9) information support of public-private partnerships; 10) training of medical and managerial personnel in the implementation of medical and social projects of public-private partnership; 11) ensuring the unity of interests of partners⁵⁴.

From our point of view, the principles of public-private partnership in the field of medical services should be divided into two groups: special and general. The first group includes: the rule of law, legality, openness, openness and transparency, professionalism and competence, accountability and accountability to society.

The second group should include the following principles: completeness of disclosure of information on the implementation and consequences of public-private partnerships in the provision of medical services; equality before the law of public and private partners in the provision of medical services; ensuring the unity of interests of partners; coordination of interests of public and private partners in order to obtain mutual benefits in the provision of medical services; the invariability during the entire term of the contract concluded in the framework of public-private partnership, the purpose and ownership of objects in state or communal ownership, transferred to a private partner in the provision of medical services; fair distribution between public and private partners of the risks associated with the implementation of contracts in the provision of medical services; determination of a private partner on a competitive basis in the provision of medical services; innovative development of medicine in order to provide patients with quality medical services.

Conclusions

The development of public-private partnership projects in the field of medical services should be a priority area of the state. The growing interest in public-private partnerships in the provision of medical services is explained by the fact that in many countries of the world it can effectively solve the problem of improving the quality of medical services by combining the resources of the public and private sectors. The use of financial resources of the public and private sectors in the provision of medical services will make it possible to more effectively solve economic and social problems in the field of healthcare. Despite the great potential, public-private partnership in the provision of medical services in Ukraine is at the beginning of its development.

In modern conditions of development of public-private partnership projects in Ukraine in the field of medical services, the following should be considered legal issues: 1) the disadvantages of regulating the legal relations of subjects of interaction in the field of medical services; 2) lack and insufficiency of qualified personnel for the development and implementation of projects in the field of medical services; 3) lack of awareness and a low level of trust of private structures in state power; 4) lack of effective state support mechanisms; 5) with political instability in the country, the problem is a significant risk of investing in the health sector.

The prospects for the state authorities of Ukraine in the provision of medical services from interaction with a private partner include: 1) attraction of additional funds in the field of medical care; 2) increasing the efficiency of budget expenditures on financing the health system; 3) use of managerial experience and innovative potential of the private

⁵⁴ O. V. Martyakova & I. V. Trikoz, "The mechanism of implementation of public-private partnership in the field of health care", *Journal of Economic Reforms*, num 4 (12) (2010).

sector. The choice of the form of public-private partnership in the provision of medical services in Ukraine should be based on the principles of public-private partnership and meet clearly defined criteria.

The forms of public-private partnership in the provision of medical services depend on the type of medical services, the objectives of public health policy, the goals and assets of specific projects, as well as the optimal financing tools for such projects. The above features of the implementation of public-private partnerships in the provision of medical services will increase their implementation effectiveness, the quality of the provision of medical services and improve the level of public health in accordance with international standards.

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