

Legal Nature of Contract for Provision of State Medical Services

Kolisnykova Hanna V.,

Ph.D. in Law, assistant professor,
Yaroslav Mudryi National Law University, Ukraine;
61024, Ukraine, Kharkiv, Pushkinskaya str., 77.
e-mail: annakolisnikova@gmail.com. Phone: +380503145225

Lekhkar Oksana V.,

Ph.D. in Law, assistant at the Privat Law Department
Institute of Law and Management of Yaroslav Mudryi
Yaroslav Mudryi National Law University, Ukraine;
61024, Ukraine, Kharkiv, Pushkinskaya str., 77.

e-mail: lekhkar@ukr.net

Samsonova Yana O.,

Ph.D. in Law, assistant professor,
Yaroslav Mudryi National Law University, Ukraine;
61024, Ukraine, Kharkiv, Pushkinskaya str., 77.
e-mail: samsonova23yana@gmail.com.

Abstract: *The relevance of the research is the contract provisions for private medical services have been thoroughly developed in scientific-legal doctrine; many studies analyze their content, classification, application. The legal essence of contracts on State (public) medical services in the current legislation of Ukraine, is not sufficiently researched that makes the issue in this area relevant. The purpose of the study is aimed at defining the concept and legal nature of contract provision for public medical services; generalization and critical understanding of the legislator's approaches to determining the role and significance of public medical service contracts in the system of contracts in Ukraine. The research main methods are dialectical, formal-logical, systemic. In particular, the systemic method was used to determine the place of the contract in the contract system as a whole. Special mention should be made of the specific scientific methods (comparative-legal, formal-legal) which were utilized to find out the legal nature of the public medical service contracts. The relevance of the research: the provisions on contract for provision private medical services are thoroughly developed in scientific-legal doctrine; many studies analyze their content, classification, application. The legal essence of the contract on public medical services in the current legislation of Ukraine, has not been sufficiently researched that that requires further examination. The research results are based on the analysis of regulatory material. It is concluded that there is no single agreed approach regarding the procedure for concluding these contracts, determining their legal nature and contract conditions in Ukraine. The authors emphasize on the recognition of the health of an individual as the highest social value of the European community, necessity of effective mechanisms for regulating health care relationships in order to achieve the highest level of health standards for all human beings, and improvement of the quality of life in general and health care in particular. The authors note that further expansion of public-private partnerships in the medical field is useful and necessary for all countries in the world. The medical services provision by public health institutions may be provided on the basis of private civil contracts. Practical significance is evident from the analysis of the normative material. The authors outline the main problematic issues regarding the legislative regulation of state medical contract and make specific proposals for improvement of the existing legislation in the medical service field. The worldwide pandemic COVID-19 has shown that effective mechanisms to regulate health care delivery relations in order to achieve the highest standard of health for all humanity and improve the quality of life in general, and health care in particular is a pressing issue for both developed countries and those seeking it. The conclusions and suggestions made can be used in the research sphere for further elaboration of problems of contract law, in the sphere of practical activity, in particular to develop contract forms.*

Keywords: contract on medical care provision, medical services, protection of patients' right, medical declaration.

Introduction

The World Health Organization declares that the possession of the highest achievable standard of health is one of the fundamental rights of every human being. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. (Constitution of WHO: principles). Similar provisions are extrapolated also in the national legislation of Ukraine, in particular in the Constitution of Ukraine and the Fundamentals of the Ukrainian legislation on health care. (Constitution of Ukraine: Law of Ukraine 1996. Fundamentals of Health Care Legislation: 1992). On October 19, 2017, the long-awaited Law "On State Financial Guarantees for Medical Care of the Population" was adopted in Ukraine, which in fact was the initial medical reform (On State Financial Guarantees for Medical Care of the Population 2018) The said law radically changed the principles of providing medical services in Ukraine. These changes reflect Ukraine's perceptions of world trends that are inherent in the European community. It is a question of

increasing the proportion of private-law methods of regulation of healthcare relations and the general expansion of dispositive principles in medical law, as opposed to the administrative levers of the Soviet era.

Literature Review

The Ukrainian legal science lacks comprehensive research into contractual obligations in the field of medical services. Separate civilistic issues of medical services were investigated in the works of OI Smotrova, *The Contract on Payment for Medical Services*, 2003; SB Buletsy "The right of an individual to life and health as an object of civil law regulation: a comparative legal analysis of regulation in Ukraine, Hungary, Slovakia and the Czech Republic", 2005; OVKrylova "Civil Legal Regulation of Relations on the Provision of Medical Assistance", 2006; VO Savchenko, *Medical Services as an Object of Civil Relations*, 2014; Hertz A.A. "Contractual Obligations in the Field of Medical Services", 2016 and others. An important contribution to the development of medical law was made by the Maidanyk R.A. (Maidanyk R. 2010)

Methodology

Research methods: the main methods for studying the problem are: dialectical, formal-logical, systemic. In particular, the systemic method was used to determine the place this contract in the general contract system. Special mention should be made of the specific scientific methods (comparative-legal, formal-legal) that have been used to find out the legal nature of the state medical contracts. In scientific circles, for a long time now, there is a discussion of the nature of the relations that arise with regard to the provision of medical services. And if in the part where the participants are private entities providing medical services on the basis of civil contracts, the opinion on the private-legal nature of the relations that arises between the patient and the doctor / the medical institution is generally accepted (Ambramovich N. 2017), then in cases where the medical services are provided by a public health care institution for public funds, the opinions of scientists are divergent.

Some of them consider medical law as a social right (sub-branch of social security law), others claim that it is a sub-branch of administrative law, while others argue the existence of a complex industry - medical / medical / healthcare law. (Maidanyk R. 2010) The nature of relations in the field of providing medical services with the participation of state institutions has its own characteristics and needs detailed research.

Conclusions and Further Research

The medical reform in Ukraine is based on the introduction of the principle of "money following the patient," and, therefore, the state undertakes to provide a certain range of medical services for the state budget, and all other services are provided by state medical institutions on a contractual basis, the payment for which the patient carries on his own. To this end, the state through a specially authorized body - the National Health Service of Ukraine (NSZU) on a competitive basis concludes a special contract with medical organizations, under which the latter undertake to provide medical services under the program of medical guarantees to patients, and the customer (NSZU) undertakes to pay such services in accordance with the established tariff and correction coefficients. (Procedure for the conclusion, modification and termination of the contract on medical care of the population under the program of medical guarantees, approved by the Resolution of the Cabinet of Ministers of Ukraine dated April 25, 2014) We can agree with the opinion of Blaschuk T.M. on the existence of two groups of relationships and two levels of contractual regulation of medical services. The first group of legal relations arises between the central executive body, which implements the state policy in the sphere of financing the provision of medical services and medicines and persons (physical and legal) who undertake to provide medical care (medical service) directly to an individual (person) (Blaschuk T.M 2017). By its legal nature, this agreement is an agreement in favor of a third person - the immediate patient to whom the service is provided.

The second group of legal relationships arises between persons (natural and legal) who undertake to provide medical care (medical service) directly to an individual (person) and a patient-individual who has sought medical care and / or is provided with such help.

The patient receives the status of a third person under the said agreement after signing the relevant declaration. The legal nature of this declaration needs to be clarified. The essence of the declaration is to establish the will of the patient to consent to the medical services provided by a particular medical institution and the choice of the immediate provider of the provider of services - a doctor.

Thus, the said declaration confirms the emergence of contractual relations between the medical institution and the patient, regardless of the form in which such an agreement is concluded, either verbally or in writing. The practice of concluding numerous contracts shows that state medical institutions of Ukraine more often conclude oral contracts for the provision of medical services, while private institutions choose a written contract form. From that

moment on the relations between the parties, all the rules, rights and obligations provided by both civil and special legislation, which regulates the procedure of medical activity in Ukraine, apply.

The contract for the provision of medical services has its own characteristics, due to the special trusting relations between its parties (so-called fiduciary transaction). As Gertz A.A. correctly points out, the identity of the contractor in the contract for the provision of medical services is of particular importance compared to the contracts for the provision of many other services (Gertz 2015). The parties to the contract are a professionally trained servant who has special knowledge and skills, and a patient who does not have such knowledge, therefore, has the right to choose a medical facility and his doctor and trust him or choose another in the event of a loss of confidence, but is not entitled to interfere in the procedure for the provision of medical services by a doctor.

Thus, we can state that in the scientific discussion about the nature of the relationship with the provision of medical services there are additional arguments in favor of their civilized nature, based on which the contract, regardless of the mechanism of their financing - at the expense of the state or the patient.

With the introduction of medical reform in Ukraine, the volume of medical services regulated by civil, not public law (Civil Code of Ukraine (2003)) is expanding considerably. <http://zakon3.rada.gov.ua/laws/show/435-15>. The equality, free expression of will, property independence and freedom of contract.

References

- [1] Civil Code of Ukraine of January 16, 2003, No. 435-IV. <https://zakon.rada.gov.ua/laws/show/435-15>.
- [2] Constitution of Ukraine: Law of Ukraine No. 254к / 96-BP dated June 28, 1996. <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/>
- [3] Fundamentals of Ukrainian Legislation on Health Care: Law of Ukraine of November 19, 1992, No. 2801-XII. Official Web-Portal of the Verkhovna Rada of Ukraine. The Grand Chamber of the Supreme Court <http://zakon.rada.gov.ua/laws/show/2801-12>)
- [4] Law of Ukraine 2168-VIII "On State Financial Guarantees for Medical Care of the Population", <http://zakon.rada.gov.ua/laws/show/2168-19>
- [5] Constitution of WHO: principles <http://www.who.int/about/mission/en/>)
- [6] Maidanyk R. 2010. Contract for provision of medical services. Medical Law.
- [7] Maidanyk R. 2010. Treaty on the Provision of Medical Services. Medical Law <http://medicallaw.org.ua/uploads/media/Maydanyk.pdf>
- [8] Blaschuk T.V. 2017 Contract for the provision of medical services (medical care) in the context of the reform of the medical sector. Journal of the National University "Ostroh Academy".
- [9] Gertz A.A. 2015. Classification of contracts for medical services. Uzhgorod National University Scientific Bulletin.
- [10] Ambramovich N. 2017 Peculiarities of conclusion, change and termination of the contract on rendering medical services Business, economy and law. <http://pgp-journal.kiev.ua/archive/2017/4/2.pdf>
- [11] Procedure for the conclusion, modification and termination of the contract on medical care of the population under the program of medical guarantees, approved by the Resolution of the Cabinet of Ministers of Ukraine dated April 25, 2014 No. 410. // <http://zakon.rada.gov.ua/laws/show/410-2018-%D0%BF>