DOI: https://doi.org/10.57125/FEL.2021.12.25.04

How to cite: Rakhimov T., Ibragimov M. (2021). Analysis of Dilemma Aspects of the Conclusion of Contracts for the Provision of Medical Services: Future Challenges. *Futurity Economics&Law, 1(4)*, -27-36. https://doi.org/10.57125/FEL.2021.12.25.04

Analysis of Dilemma Aspects of the Conclusion of Contracts for the Provision of Medical Services: Future Challenges

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Received: September 28, 2021 | **Accepted:** December 4, 2021 | **Published:** December 25, 2021

Abstract: The subject of the study is the contractual relations in the provision of medical services on a fee-for-service basis. The theme of the study is the study of the fourth generation of human rights related to medical aspects, including the accessibility of medical care and services to patients. The study aims to assess the elements that ensure the observance of human rights as a patient when receiving medical services on a fee-for-service basis. General and special methods of scientific knowledge were used to achieve the goal of the study. The conclusion of the study is the substantiation of the position that paid medical services are not available for all categories of patients, limited access to them have people in rural areas, and the population of those countries that have weak or underdeveloped economies. The result of the study is substantiation of the point of view that the most effective way to implement the patient's right to receive paid medical services at a high level and guarantee protection in case of their violation is the conclusion of such a contract between the patient and the medical institution, which contains complete information about the order, scope, and conditions of medical care. When conducting the study to achieve its goals and objectives, the resource of the electronic journal ScienceDirect was used. The search tool offered 82 scientific articles related to the topic of the study, but most of them were related to the field of medical knowledge and did not correspond to the subject of the study, so they were not used in its conduct.

Keywords: medical care, medical facility, economic activity.

Introduction

Research Problem

Both individual health and public health are the most important value, that is why society and the state are interested in their protection, which implies a certain socio-economic policy, improvement of infrastructure, as well as the establishment of a balanced legal regulation of social relations related to receiving medical care and services by a person. Medical intervention in the human body inherently entails the emergence of the risk of harm to him, so there is a need for continuous improvement of both the medical norms themselves and the legal norms that accompany the process of providing medical services.

Research Focus

The right to health, as enshrined in the constitutions of democratic states around the world, implies that governments must ensure the conditions under which everyone has the opportunity to exercise it. Such conditions include ensuring the availability and accessibility of health services, healthy and safe working conditions, adequate housing, and other conditions that ensure the right to health.

Research Aim and Research Questions

The object of the study is a contract for the provision of medical services on a fee basis, the subject of the study are the rules of law regulating the contractual relations of the provision of paid medical services. The aim of the study is a comprehensive study of the contract for the provision of medical services on a fee basis and trends in its legal regulation in the future. In order to achieve the goal the task of the study is to analyze those factors that affect the activities of the medical institution as an economic entity.

Literature Review

The full functioning of a medical facility is possible if all elements of its security are ensured, primarily information and economic security. It has been suggested that the attributes that distinguish medical systems from other information systems are patient-centeredness, confidentiality of the information processed, government intervention in the functioning of medical facilities, and the need to ensure maximum availability of system resources (Hajder et al., 2020). For example, in health care, various sources of extensive information data include hospital records, patient medical records, results of medical examinations, and devices that are part of the information stored in the virtual space of the Internet (Dash et al., 2019). To provide information support for a complex management process using information and communication technologies, different types of software and simulation packages are being created that can combine, for example, a traditional medical information system and an additional unit of an automated health care cost management system.

The sphere of medical services is closely connected with the economic and social situation in a certain state. For example, a study of these areas of society found that the economic growth goals of national governments constrained public spending on education, science, and technology, and this distortion led to stagnation of human capital and technological progress, holding back long-term economic growth (Liu et al., 2020). In addition, and terms of health outcomes, the poorest countries will lose more from such social disruptions and imbalances (Blanchet et al., 2020). This provision also applies to business entities such as health care providers because it is quite difficult for them to provide their own economic security on their own. The reason is that it reflects the peculiar state of the economic system, which allows the economic system to develop dynamically, efficiently and solve social problems, and the state has the opportunity to develop and implement in practice an independent economic policy. Also needed is a better understanding of how cultural, behavioral, and health system factors converge and contribute to unequal and differential access to health services for patients (Wasserman et al., 2019).

Innovation has a significant impact on the competitiveness of business entities. Their most noticeable positive effects are (i) technological trends affecting the productivity of production, services, and work performance, (ii) flexibility affecting the internal aspects of the enterprise itself, and (iii) customer satisfaction. These implemented innovations, realized in the delivery to the consumer, affect the market as a whole (Baierle et al., 2020). The competitiveness of a medical institution is also determined by the price level of the services it provides. Using structural cost models of health care services, it is quite easy to determine the ratio of the costs incurred by an institution in providing certain services to the revenues that the health care institution receives or intends to receive for the future. In addition, a modern health care delivery information system is augmented with medical record-keeping tools to improve patient care (Limanto & Andre, 2019). This ensures that patient information is stored and helps to provide a higher level of health care services.

A fee-for-service contract should be adapted to each specific situation, including the use of qualitative and quantitative methods with triangulation of information from the patient and health care facility stakeholders, direct observation of the health care facility by the state, analysis of public policy in a particular area, planning and implementation of the health care facility in accordance with it (Mehmood et al., 2018). Individual approach to each patient when concluding a contract for the provision of paid medical services should not only refer to its provisions, contain detailed information about the order, conditions, and volume of medical care to be provided. Also, the text of the contract should provide, develop and specify individualized and customized medical services to meet the special needs and preferences of individuals in order to attract more patients to contracted services (Zhang et al., 2021).

According to the mentioned, the contract for fee-for-service health care services, which provides health care to the patient while maintaining patient safety, needs to be further developed and improved (Chen, 2017). Medical services and care and patient safety are interrelated and interconnected elements of the medical system, which is part of the health care system of a particular country. For example, effective policymaking in health systems begins with a clear typology of terminology – “need”, “demand”, “supply” and “access to health care”, as well as a study of their relationship (Rodriguez Santana et al ., 2021). This can be explained from the point of view that there is no consensus among scientists on the definition of indicators and factors of the quality of medical services, which has a significant impact on the contractual practice of providing medical services on a fee-for-service basis (Endeshaw, 2020). Accordingly, theoretical developments in the provision of paid medical services are important for practical activities.

Social, economic, and political changes in society, as well as unpredictable natural force majeure events, have a significant impact on health services. For example, the SARS-CoV-2 pandemic has challenged health systems worldwide (Baumgart, 2020). The coronavirus pandemic during 2020-2021 caused changes in fee-for-service healthcare delivery, which was due to the fact that it triggered an unprecedented burden on patients, health care providers, and facilities. At the same time, the relationship of the pandemic to the use of preventive, routine, and non-elective care, as well as potential discrepancies in healthcare utilization, remain unknown (Whaley et al., 2020).

An undeniable objective factor affecting the scope of healthcare delivery is that national healthcare systems are not effective in all countries (Bielecki & Nieszporska, 2019). Countries with more developed economies have better legal regulation of the medical sphere, including the contract for the provision of paid medical services, as well as more opportunities for patients to exercise their right to health. Consequently, a number of factors of internal and external nature influence the sphere of providing medical services, and taking them into account will allow a medical institution to adjust its activity so that it could strengthen its economic position and ensure the efficiency of its economic activity. In such circumstances, the formation of a national insurance scheme increased government contribution, and the formation of public-private partnerships (Kavuma et al., 2020) should be identified as the main strategies for overcoming financial constraints under force majeure conditions for medical institutions.

Appropriate training of health care providers is also important, in particular allowing to improve the ability of professionals to cope with their work, and in structural interventions in the workplace helps to strengthen the ability of health care providers to bear the intense workload (Juliá-Sanchis 1 al,). This will significantly improve the quality of medical services provided to the patient. In addition, it is advisable to enshrine provisions in the contract on the quality of medical services to be provided to the patient, as the level of practical skills of providing both emergency medical care in general and medical services, in particular, remains low (Lyovkin & Pertsov, 2021). This is especially true of privately owned medical institutions in post-Soviet countries, despite the fact that the provision of medical care and services plays a vital role in saving lives and reducing mortality and morbidity (Aringhieri et al., 2017).

The population's accessibility to healthcare services is driven by the supply of healthcare services (Ursulica, 2016). However, a problematic aspect of their provision is that health services, especially those provided on a fee-for-service basis, are not accessible to all categories of the population. For example, urban residents are better able to exercise their right to health, while most provinces have inefficient rural healthcare systems (Zheng et al., 2019). While urban dwellers have the option of using fee-for-service health care if they are not satisfied with the level of provision of similar free services, those in rural areas do not, either because there is no appropriate health care facility or because of the high price of health services for that category of the population. The population of rural areas does not have it either because of the lack of an appropriate medical institution or because of the high price of medical services for the population.

In addition, the provision of medical services on a fee-for-service basis should be formalized through a contract between the patient and the medical institution to avoid uncontrolled activities in this area, since the excessive use of unnecessary services can harm patients physically and psychologically, and can also harm systems of protection. health, since they waste resources and divert investment, both in public health and social spending aimed at improving public health (Brownlee et al., 2017).

Research Methodology

General Background

General methods (dialectical, analysis and synthesis, induction and deduction) and special methods of scientific knowledge (prediction, modeling) were used to achieve the goals and objectives of the study.

Sample / Participants / Group

The main group of the study were the participants in the contract for the provision of paid medical services, namely - the person as a patient and the medical institution as a business entity.

Instrument and Procedures

The main tool of the study is the analysis of the current state of the legal regulation of the contract for the provision of paid medical services and modeling trends in its development in the future.

Data Analysis

Analyzed the basic provisions of the legal regulation of the contract of medical services, investigated its legal nature, studied the relationship with the concept of “medical care”, as well as highlighted the specific features of this type of contract.

Research Results

The term “medical care” can be disclosed through the concept of medical service, a set of measures aimed at supporting and (or) restoring health. Medical aids and services are components of

medical activity, which can be understood as a set of measures carried out as part of a single process of prevention, diagnosis, treatment, and rehabilitation of a patient. One of the main criteria for differentiating medical care and medical services is payment for their provision. Medical services are paid activities (or a complex of paid activities), are not related to the performance of work, and are carried out within the framework of medical activity by medical professionals, they are aimed at disease prevention, diagnosis, and treatment to meet the needs of citizens to support and restore health. One can also consider the point of view that the medical service is a broader category, which is interpreted because of the peculiarities of the result of activity in the provision of medical services and care.

It seems more important to distinguish between the concepts of "medical service" and "medical care" in the legal sense since the provision of medical care is mainly regulated by norms of public law, and the provision of medical services - by norms of private law, when signing an agreement on providing paid medical services. Indeed, one-time medical care for one patient can act as a simple, complex, or complex medical service. Medical care for a person throughout his life or provided, for example, by a medical institution to all persons undergoing treatment in it, goes beyond the limits of civil law regulation into the sphere of public law and cannot be limited by the term "medical service".

The need to distinguish between the concepts of "medical care" and "medical service" when concluding a contract to provide paid medical services lies in the need to legally ensure the process of their implementation, especially when providing paid medical services by state-owned institutions. This can be explained from the point of view of the fact that the identification of these concepts can prevent a clear distinction between the processes of providing medical care within the framework of state guarantee programs and within the framework of providing medical services under the relevant contract.

The concept of "medical assistance" is wider than that of "medical service" from the point of view of the social aspect, accordingly, it seems inappropriate to use the term "medical service" regarding emergency and ambulance medical assistance, issues of state preventive programs and those aimed at improvement and preservation of health. Of a certain nation in general, measures aimed at increasing life expectancy, rehabilitation of disabled people, and medical support of socially vulnerable layers of the population and some others. At the same time, the concept of "medical service" can be considered broader than medical care in the case when we are talking not only about measures aimed at treating the patient but also about the provision of additional services to the patient in the process of receiving medical care. In addition, the provision of paid medical services, in most cases, is planned and is always associated with the need to inform citizens of their rights to medical care within the program of state guarantees.

From the practical point of view, in the aspect of realization by a person of his right to health, it is not only the legal regulation of its activity that is important concerning a medical institution. Economic security is a state of an economic entity, including a medical institution, which is characterized by stability at a certain stage and the availability of its own resources for development in the future. Obviously, economic security is a position formed by daily ongoing organizational, managerial, and controlling economic processes.

Economic security is a multifaceted concept, which includes a complex structure. From the financial aspect of understanding a medical institution, the three most important elements of economic security can be distinguished: economic independence, which involves the ability to control internal resources and achieve a level of efficiency of the institution that ensures its competitiveness; stability and sustainability of economic position of the institution, which creates reliable conditions for functioning and guarantees current activities; ability to develop, which involves the availability of internal p

Consequently, the economic security of any subject of entrepreneurial activity is the basis of its management, and, accordingly, its ensuring at the level of a medical institution also becomes very important. At the present stage, medical institutions of post-soviet countries implement their activities under such conditions that a strategy of self-governance and self-organization is necessary for them, which consists in creating and maintaining their stable functioning by their own efforts. Medical

institutions are forced to adapt to the imperfect legal framework, the lack of medical equipment and qualified workers, as well as the insolvency of partners.

A medical institution, on the one hand, must keep prices at such a level to be able to maintain its position on the medical services market, and in case of implementation in its activity of a large deviation of prices from the market average - must have quite good reasons for this. In addition, the cost must cover the costs, because it is the presence of additional income allows the development of the medical institution for the future. Otherwise, if for a certain period of time, it will not be able to cover its costs, the medical institution will gradually lose its sustainability and economic independence.

An equally important aspect of medical institutions is their information security. Expanded possibilities of using information and communication technologies and their effective implementation, for example, for storing information about patients or automating payment for medical services, allow more adequate managerial decisions regarding the pricing policy of medical institutions, planning of procurement activities, rational use of resources. Consequently, automated systems are necessary not only for the formation of prices for paid medical services but also for clear cost planning when providing other services, as they allow to make structural models of their cost. The mentioned management systems in the sphere of providing medical services, in particular on their payment, allow calculating the cost of medical services based on local norms of expenses of medicines and other consumable materials, the time necessary for providing services, time norms of using medical equipment.

It should also be noted that such structural models of service cost can serve to formalize the standards of service provision, and their clear setting and implementation also contributes to the economic security of the medical institution. Effectively built structure of the cost of medical services allows to implement a competitive pricing policy. Prices (tariffs) for medical services can be calculated in different ways, but in order to maintain a stable and sustainable position of a medical institution, the main criterion of economic security should be the need to set such prices that at least cover the costs of providing medical services. The structural models of services formed in this way can serve as local normative acts establishing the planned expenses of the institution.

Discussion

Legal relations arising under the contract for rendering paid medical services are regulated by the norms of civil law. Civil legislation defines the main characteristics, according to which the concluded agreement can be referred to contracts for rendering services on a paid basis: the executor undertakes to provide services to the client (to perform certain actions or carry out certain activities), and the client undertakes to pay for these services. To the contract for the provision of paid medical services are often mistakenly applied the rules of related contracts - work contracts and assignment contracts. Indeed, to it can also be applied the provisions of the contract of workmanship, but despite the possibility of applying the same legal norms, these contracts are not identical. The main difference between the work contract and the service contract is that the result of work under the work contract is a thing, and the result of the medical service can be material (dentistry) and can be non-material (therapy). In addition, it is necessary to note that contract practice shows that when signing a contract on providing paid medical services a patient, as one of the parties, is often put in advance disadvantage and forced to either agree with certain conditions or refuse them. In addition, often the administration of medical institutions believes that the requirement to provide information about medical services is a mere formality, but this approach can have extremely negative consequences for the patient.

Given the development of contractual relations in health care, as well as the trends of world economic realities, in the new paradigm of medicine, the patient acts not only as a patient but also as a consumer of medical services and a subscriber to health insurance. However, the identification of the concepts of “medical service” and “medical care” can provoke a conflict between the historically established relationship between the doctor and society. A service, unlike medical care, can be a commodity, since it is the subject of a contract and provides for payment for its provision, and is not vital in all cases. Paid forms of medical services, in the way they are perceived by society, are often

identified with medical care, but in our opinion, this can lead to weighty legal consequences, in particular, the mixing of these unequal concepts. Thus, in judicial practice, disputes arising from the provision of medical care under insurance contracts are mostly considered as arising from the insurance contract, and, accordingly, the provisions of legal regulation of consumer rights protection do not apply to them, but the norms of civil codes are used. countries and special legislation on insurance.

Relations on providing medical services are formed between a medical institution, an entrepreneur providing such services, and a patient-consumer of the relevant services. In this case. if the provided services are not implemented within the framework of compulsory or voluntary medical insurance and the patient, independently choosing a medical institution and type of services, acts on his own will, then such relations of the parties are fixed by a contract for providing medical services, which acts as a legal form of mediating relations between them Since any medical activity is performed on a fee basis (payment is either at the expense of citizens or the relevant fund), it can be assumed, The fact that the customer and the recipient of the service are not always the same, fully meets the civil law category of a contract in favor of a third party.

Patient-customer has the right to demand the fulfillment of service of proper quality within the stipulated terms (the term should also be recognized as a material condition of the contract, since the reimbursable provision of services is regulated by the norms on contracting, and the term is an essential condition of the contract of work). This right corresponds to the obligation of the executor to perform the activity stipulated by the contract. At that, the performer is obliged to provide the service in person, unless the contract stipulates otherwise. The performer has the right to timely payment for the implemented activity. In case of impossibility to fulfill the obligation, caused by the fault of the customer, the services are to be paid in full, unless otherwise stipulated by the contract. In the case that the impossibility of performance has arisen through no fault of either party, the client will reimburse the contractor for the actual costs incurred. The concept of “impossibility of performance” differs in its legal consequences from “unilateral refusal” from performance.

As for the desired positive effect of a medical service, an intangible result (beneficial effect of a service) cannot be considered as a component of the subject matter of a contract for medical services (unlike contractual agreements, where the subject matter covers both the work performed and the result), since its achievement does not depend in full on the will and actions of the parties. The scope and peculiarities of this contract are very specific, since its subject matter is influence on human health, the very inalienable, which belongs to a person from his birth, a legally protected value, and the influence occurs on the initiative of the bearer of this value. By entering into a contract and “ordering” certain services for his health, the patient wishes to receive an absolutely certain result. But of course, in the medical sphere, it is not always possible to reliably predict this outcome, as well as its non-achievement, which is always a direct consequence of improper performance by the medical institution of its own duties. Accordingly, it is justified not to include in the subject of the contract the result as a desired positive effect.

Despite the above, the relations of the forming parties in one way or another are aimed at achieving the desired effect of the service. First of all, we are talking about information obligation on the part of the service provider, and requirements for the content of such information. Important are requirements for the quality of the service that is provided, which is partially ensured by the state, which establishes requirements for medical activities and controls their compliance, including through licensing and accreditation of the medical institution. The contract on rendering paid medical services belongs to civil-law ones, the specifics of its scope stipulate that its legal regulation is of a complex nature. The rights and obligations of parties to the contract to provide medical services should be defined in two aspects - from the position of norms of civil and norms of legislation on health care of citizens.

One of the important duties of the executor under the contract for the provision of paid medical services should be to respect medical secrecy - a moral category, which has acquired its own legal framework, designed to protect the honor, dignity, and health of citizens. The patient should have

guarantees of this right, supported by more clearly defined in-law sanctions for non-compliance with it in relation to civil legal relations in the provision of medical services.

At the present stage, the issues of the quality of medical services are of particular relevance. On the one hand, civil legislation provides guarantees and opportunities to protect the rights of the patient-customer of services, but on the other hand, this process is becoming declarative because of the existing problem of expert examination of the quality of medical services. Ways to overcome this situation have not yet been found, although it is clear that the actual inability to prove the poor quality of medical services nullifies the opportunities to protect patients' rights provided by the law or the contract.

A party-executor in a contract for the provision of medical services can be both an institution providing additional medical services and a commercial organization or an individual physical person-entrepreneur. In the first case, a condition for the emergence of civil-law liability must be the totality of necessary elements - illegality, the presence of damage (losses), and the causal link between them. In the second - we can talk about the increased responsibility of a subject of entrepreneurial activity, responsibility regardless of the guilt of such an organization for harm caused to the life and health of a patient. But if, as such, the damage was not caused, but the service was performed poorly, even in this case there is a need to prove the poor quality of the service performed.

In general, it should be noted that within the framework of civil legislation the contract for rendering paid medical services requires more detailed regulation taking into account its peculiarities and specifics of relations. In particular, there is a need for more accessible, from the point of view of law enforcement, guarantees of the quality of services, conditions of liability, it is advisable to provide for compulsory insurance of liability of a provider.

Conclusions and Implications

As a result of the study, the following conclusions can be made. When concluding a contract for the provision of paid medical services it is necessary to refuse to use predetermined standard forms for an indefinite range of clients, as it limits the freedom of the party that joins the contract, to determine the content of conditions and must comply with the principle of proportionality, due to which the citizen as an economically weak party in these legal relations requires special protection of their rights, and conditions for the such contract must be prescribed taking into account the individual characteristics of clients. It is unacceptable in a contract for the provision of paid medical services to offer a patient one or more conditions for agreement, and force him to accept the remaining conditions in the unchanged wording of the offeror.

Thus, according to the conditions of a particular situation, it is not always possible to be guided by the rules stipulated by the current legislation when concluding a contract for the provision of paid medical services. One of the most important solutions necessary for the situation in the contractual practice of this branch of medicine is to develop legislation on compulsory liability insurance of doctors to third parties. Further scientific research of the outlined problems is also necessary.

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