

Legal provision for medical aid and medical service in Ukraine

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Abstract. In the process of any human right exercising there is always an issue related to quality of received service or aid especially in the healthcare sector. We strongly believe that human physical existence may be substantially influenced by high-quality medical service. Authors analyzed applicable legislation of Ukraine regulating provision of medical aid and services with use of following methods – analysis, interpretation, hermeneutics, systemic-structural. During the research were analyzed applicable legislation which contains medical aid and service definitions and peculiarities of its regulation. According to the results of regulatory framework analysis we can state that definitions “medical aid” and “medical service” are mutually reinforcing as medical aid comprises relevant procedures. Comparison of these phenomena also can be performed on the basis of other criteria, namely: subjective composition (professional medical staff will always be the provider, in case of emergency cases – persons whose duty is to provide primary medical aid as part of their activity; medical services are provided by state and municipal facilities along with higher educational establishments and research centers, i.e. not only medical staff; payment (regarding the subject – free of charge or paid; services are paid per se except if covered by relevant budget category); financial guarantee (both processes are guaranteed by the state except special cases and if medical insurance program is selected).

Keywords: healthcare system, comparison criteria, Ukrainian legislation, financial support.

JEL Classification: I18; K10.

Introduction

Recently due to presentation of the broad spectrum of organizational innovations in healthcare sector a lot of attention has been paid to the quality of medical aid provided to citizens. Namely, healthcare reform stipulates certain transformation of primary healthcare area (establishment of family doctor component), refunding of healthcare facilities depending on its specialization and range of activities, newborn and obstetric fosterage, implementation of “Accessible treatment” program etc.

Currently duties and obligations have already been segregated between emergency aid services and other medical facilities, scope of competence of private healthcare facilities has been sufficiently extended, procedure for medical preventive aid has been transformed, electronic prescription system has been introduced (Deshko et al., 2021). All the above mentioned stimulates analysis of such definitions as “medical aid” and “medical service”, correlation of its content, implementation and enforcement subjects. It requires additional study with aim to develop optimal ways to improve the healthcare system in general, its specific components, in particular paid services and free-of-charge aid.

Scientific issues of social relations legal regulation in the medical field are not new to the theoretical jurisprudence. Therefore, there are fundamental works of representatives of legal and medical science, whose role is important in addressing the institutionalization of national legislation, its compliance with trends in medicine, the effectiveness of application and ect.

In the works of Y. Gubsky, V. Serduyk, A. Tsarenko, O. Yakymenko, O. Skripnik, L. Solopa, O. Konovalenko, M. Vinnytska, O. Khodora, I. Parobetska, V. Hrynash, V. Jakhovsky, V. Livinsky, others, that have researched the topics about the development of law in the medical field, the emphasis has been made not only on the levels of legal regulation (international, national, legislative, bylaw), the creation of a single medical space, improving services for village residents, strengthening the material and technical base or innovative factors of legal regulation (reproduction, cloning, transplantation), features of regulation of emergency medical care for patients with COVID-19, but also on other important aspects of the development of the medical field of law as a complex formation. The study also examined the latest works of foreign scientists analyzing international methods of legal regulation of medical services – M. Schubert et al. (2016), M.L. Goldman et al. (2020), B. Mauroy (2021), R.U. Dusnaevich (2020), N. Trihastuti et al. (2020). At the same time, in characterizing the research condition of the selected phenomenon, it is necessary to pay attention to the paucity of publications that contain the normative context of terminological interpretations, including in relation to such fundamental concepts as medical aid and medical service, which caused to the appeal to the selected issues.

That is why this research is aimed at analysis of regulatory framework for medical aid/services provision in Ukraine on the basis of different comparison criteria.

To reach the defined aim relevant tasks and certain methodological base must be outlined:

- present the regulatory content and comparison of such definitions as “medical aid” and “medical service” by studying the applicable international and domestic legislation and with methods of analysis, interpretation and equiparation;
- study the available regulatory framework and characterize the criteria for medical aid and medical service segregation using classification, hermeneutics and systemic-structural method;
- present conclusions using the generalization method.

Comparison of the concepts of „medical air” and “medical service” in Ukrainian and international legislation

Before we start comparing the regulatory framework and segregate the “medical aid” and “medical service” definitions it is appropriate to analyze the applicable Ukrainian and international legislation to define the correlation between definitions contained.

Therefore, having considered a number of documents devoted to this issue, we can state that they do not have any definition of “medical care”, but there are relevant provisions for the recognition of such a person's right (Suner, 2015; Trihastuti et al., 2020). For example, in part 2 (d) Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966) noticed, that “the steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include the creation of conditions which would assure to all medical service and medical attention in the event of sickness”.

In part 2 (b) Article 24 of the Convention on the Rights of the Child (1989) fixed that “States Parties shall take appropriate measures to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care”. Also, in the

part 1 (13) of the European Social Charter (1961) guaranteed, that “anyone without adequate resources has the right to social and medical assistance” and in the Article 13 of this Convention appropriate security measures are provided.

It is worth focusing on the provisions of the European Convention on Social and Medical Assistance and its Protocol (ETS No. 14) (1953), which contain provisions on cooperation between the member states of the Council of Europe in various fields, including medical aid. In such definition it is proposed to understand “in relation to each Contracting Party all assistance granted under the laws and regulations in force in any part of its territory under which persons without sufficient resources are granted means of subsistence and the care necessitated by their condition, other than non-contributory pensions and benefits paid in respect of war injuries due to foreign occupation”. However, the peculiarity of this document is that it extends only to the states of the Council of Europe.

As for the international definition of the term “medical service”, in the process of our scientific research we found only one international legal act that would contain provisions for the definition of this concept. According to the Article 1 of the Medical Care and Sickness Benefits Convention (No. 130) (1969) the term medical service “includes allied benefits”. At the same time, it seems rather unclear what is meant by this definition, as the article itself contains only an indication of the legislation and persons who may receive such services (husband, wife, children under 14 years and older).

According to the national legal analyzed documents, the normative interpretation of the term “aid” contained exclusively in three international instruments ratified by Ukraine, namely:

- means either direct benefit in the form of care or indirect benefit consisting of a reimbursement of the expenses borne by the person concerned (Social Security..., 1952);
- means any measure fulfilling the criteria laid down in Article 107(1) of the Treaty (part 1, 1.3 (b) Communication from the commission (2014);
- in relation to each Contracting Party all assistance granted under the laws and regulations in force in any part of its territory under which persons without sufficient resources are granted means of subsistence and the care necessitated by their condition, other than non-contributory pensions and benefits paid in respect of war injuries due to foreign occupation” (European Convention..., 1953).

At the level of national legislation, we reviewed the normative definition of the term “service” and have identified seventeen definitions of “service” and more than eighty that are directly related to the scope (Fyl et al., 2020). We consider the most extensive definitions used by the legislator as specific juridical constructions in the system of rules of legal technique. So, judicial constructions allow fixing service as:

- activity of the executor on granting (transfer) to the consumer of a certain material or intangible good determined by the contract, which is carried out by individual order of the consumer to meet his personal needs (The Law of Ukraine “On Consumer Protection”, 1991);
- reception and service of insured persons, persons registered with the Pension Fund as recipients of pensions, persons entitled to a pension, payment of funeral allowances, insurers or their authorized persons in order to resolve the issue with which they apply to the Pension Fund authorities (The Resolution of the Board of the Pension Fund..., 2015);
- administrative service provided to an individual (The Order of the Ministry of Internal Affairs..., 2018);
- action to provide information (data) and/or documents in electronic form (The Order of the Ministry of Finance..., 2017);
- service of production nature of third-party organizations for maintenance and operation of production equipment and equipment used in the technological process of design development, production of security paper, banknotes, coins and state awards of Ukraine, their storage, transportation and accounting, research or consulting, including new technologies, protection systems, examinations, assessments, preparation of conclusions, as well as training of employees, etc. (The Resolution of the Board of the National Bank..., 2013);

– any subject of purchase, except for goods and works, in particular transport services, development of technologies, scientific researches, research or development, medical and household services, hire (rent), and also financial and consulting services, current repairs (The Law of Ukraine «On Public Procurement»..., 2015).

As for the direct subject of research, which is limited to the medical field, in Ukrainian domestic legislation there are few acts containing the definition of medical aid (Deshko et al., 2021). Firstly the Resolution of the Cabinet of Ministers of Ukraine No. 955 “On approval of the Program for state-guaranteed free medical aid provision to citizens” (2002) where it is clearly stated that “medical aid is a type of activity which comprises a set of measures aimed at patients’ treatment and health improvement if their condition poses threat to life, health and working ability and must be performed by professionally trained employees with relevant authority and capacity according to legislation”.

Secondly, we should analyze the Order of Foreign Intelligence Service of Ukraine No. 246 “Approval of Instruction on organization of medical aid provision in Foreign Intelligence Service of Ukraine” (2014) where it is clearly stated that “medical aid is the activity of professionally trained medical employees aimed at prevention, diagnostics, treatment and rehabilitation in certain conditions caused by disease, traumas, intoxications and pathoses along with pregnancy and labour”. Identical definition is contained in the Law of Ukraine “Basic laws of Ukraine regulating healthcare activities” No. 2801-XII (1992).

Having compared the content of both definitions we may conclude that Order of Foreign Intelligence Service of Ukraine (2014) and Law of Ukraine “Basic laws of Ukraine regulating healthcare activities” (1992) present more detailed interpretations whereas the Resolution of the Cabinet of Ministers of Ukraine “On approval of the Program for state-guaranteed free medical aid provision to citizens” (2002) does not mention prevention and rehabilitation procedures, the definition itself is more constrained in terms of content and temporal limitations (aid is to be provided directly to person if critical condition is established). Also, there is a subtle controversy related to definition of service provider (subject) as “...professionally trained employees with relevant authority and capacity according to legislation” must not necessarily be doctors but, for example, policemen (The Law of Ukraine “On National Police of Ukraine”, 2015). It is doubtful if this person is able to professionally perform any activities related to health improvement or treatment, especially long-term. These employees will be able to provide emergency medical aid to sustain life and health prior to medics’ arrival, create certain conditions for further recovery.

Domestic legislation contains only one definition of “medical service” – Law of Ukraine “Basic laws of Ukraine regulating healthcare activities” states that “medical service is a service provided to patient by healthcare facility or individual entrepreneur registered according to established procedure with issuance of license for business activity performance involving medical practice and paid by the requestor (Deshko et al., 2021).

Therefore, comparing with the definition of “medical aid”, this does not mention such characteristics as: 1) professionalism; 2) qualification; 3) list of services and cases for its provision which are essential. We can compare these definitions directly with use of common criteria e.g., content, subjective composition, payment and guarantees.

After these definitions are compared, we can state that legislator defines medical aid as:

– emergency (medical aid of urgent nature comprising set of emergency organizational, diagnostic measures and treatment to save and sustain life and health in critical condition and minimize the consequences of its impact) (The Law of Ukraine “On Emergency Medical Aid”, 2012);

– primary (dynamic monitoring of patient’s condition; diagnostics and treatment of the most widespread diseases, injuries, intoxications, pathological and physiological (pregnancy) conditions; provision of emergency medical aid in case of physical/mental disorders to patients in the scope of PHC; referrals based on patients’ medical indications (if no emergency aid is required) for provision of secondary (specialized) or tertiary (highly specialized) medical aid; interaction with providers of secondary (specialized) or tertiary (highly specialized) medical aid; required medical interventions in

case of identification of factors of certain disease development; preventive interaction (vaccination, notifications on infectious diseases, epidemiological examination of individual cases of infectious diseases); advisory support; dynamic monitoring of uncomplicated pregnancy; monitoring of healthy children; specific services related to palliative aid (patients of all ages and referrals for provision of palliative aid beyond the PHC scope); prescription of pharmaceuticals and medical products, technical rehabilitation means and other organizational services) (The Order of Ministry of Healthcare of Ukraine No. 504..., 2018);

- specialized (aid provided in both formats – in-patient and put-patient – by doctors with required specialization (except family doctors), scheduled and urgent, with consultations, diagnostics, treatment, rehabilitation and prevention of diseases, injuries, intoxications, pathological and physiological (pregnancy/delivery) conditions; referrals based on patients' medical indications for provision of secondary (other specialist) or tertiary (highly specialized) medical aid) (The Law of Ukraine "Basic laws of Ukraine...", 1992);

- highly specialized (aid provided in both formats – in-patient and put-patient, scheduled and urgent, with consultations, diagnostics, treatment, rehabilitation and prevention of diseases, injuries, intoxications, pathological and physiological (pregnancy/delivery) conditions with use of highly specialized equipment and/or relevant complex of medical procedures; referrals based on patients' medical indications for provision of secondary (specialized) or tertiary (highly specialized) medical aid) (The Law of Ukraine "Basic laws of Ukraine...", 1992);

- palliative (set of measures aimed at improvement of patient's and his/her relatives' life quality, prevention and minimization of patient's suffering (emotional and physical) with early diagnostics of pain symptoms and certain disorders, performance of appropriate medical activities, symptomatic therapy and aid, psychological, social, spiritual support or rehabilitation regardless of patient's age, condition, social status, nationality, religious/political beliefs, place of residence) (The Order of Ministry of Healthcare of Ukraine No. 733..., 2018).

Resolution of the Cabinet of Ministers of Ukraine "On approval of the the list of paid services provided in public and municipal health institutions and higher medical institutions" (1996) will be a good foundation for further study of the problem – it establishes the list of paid medical services differentiated by the legislator on the basis of content. For example, some of its provisions state that state and municipal healthcare facilities provide the following paid services: cosmetological; anonymous testing and treatment of persons with STDs and different types of addiction (except HIV/AIDS testing); infertility treatment and abortion (various medical indications); physical health improvement and prevention; consultations and treatment of articulation disorders; medical examinations; dentist's and ophthalmologist's services; management of recreational facilities, sport competitions, cultural and social events; laboratory testing; provision of aid to patients (in-patient and out-patient) including separate agreement conclusion; preventive vaccination for different categories; services involving telemedicine and nonconventional medicine; different types of forensic examination; examination, consulting and treatment of patients with sexual disorders except cases involving complex mental problems; management and issuance of relevant records; radiopharmaceuticals and donor's blood; training of non-medical staff (emergency aid) and doctors' (pharmacists) internship; clinical trials of drugs and research; medical services provided by research facilities of National Academy of Medical Sciences; tertiary medical aid (transplantation of organs).

Analysis of political acts on the provision of medical care and medical care in Ukraine

Upon the results of comparison, we would like to present certain critical remarks to the presentation of material in legislative acts. In particular, at first glance it seems that list of medical aid formats is radically different from the list of medical services but it is not so. Legislator uses the category "medical aid" to cover separate services which are its components.

In regard to this there is a necessity to compare the content of definitions, performance of additional interpretation. For example, Law of Ukraine "Basic laws of Ukraine regulating healthcare activities" (1992) stipulates provision of specialized medical aid as its separate type including consultations and diagnostics. Decree of the Cabinet of Ministers of Ukraine "On approval of the list

of paid services provided by state and municipal healthcare facilities and higher educational establishments” (1996) mentions identical types of medical service – diagnostics, prevention, treatment, consulting etc.

The definitions are also compared on the basis of service/aid providers (subjects). After analyzing the lists of The Law of Ukraine “On Emergency Medical Aid” (2012), we can state that medical aid is provided by professional medical staff, emergency service staff, fire brigade members, policemen, pharmacists, carriage stewards, airplane crew and persons with relevant duties. Still, medical services may be provided by healthcare facility or individual entrepreneur who is registered and granted a license to perform business activity related to medical practice – state and municipal healthcare facilities, higher educational establishments and research centers, private legal entities acting on a paid basis.

One of urgent issues is the receiver of service/aid – the patient. Applicable legislation guarantees that medical aid is provided to citizens of Ukraine, stateless persons residing permanently within the territory of Ukraine, persons officially recognized as refugees or requiring special protection and covered by the state budget (Bortnik et al., 2021). Foreigners and stateless persons residing temporarily within the territory of Ukraine must pay for aid/services – after receiving emergency aid they individually cover expenses on treatment and health improvement. Medical services requestor may be presented by state, local governance bodies, legal entities and individuals including patients.

According to the analysis of abovementioned legislative acts the following criterion is the payment. Legislation states that medical aid is provided to citizens of Ukraine, persons residing permanently within the territory of Ukraine free of charge except persons residing temporarily within the territory of Ukraine. Medical services are provided on a paid basis except of cases when state guarantees coverage from the budget for special services. Of the same significance is the criterion of financial guarantee – the Law of Ukraine “On financial guarantees of medical aid” states that “medical guarantee program is approved by Verkhovna Rada of Ukraine and included in the state budget”. Therefore, every year state establishes the list of certain activity categories (both medical aid and medical services) covered from the budget. If person wants to receive medical aid or services which cost is not covered, one may pay individually or reimburse the cost with use of medical insurance.

Analysis of regulatory legal acts on the provision of medical care and medical care in Ukraine

Therefore, on the basis of analysis of applicable domestic legislation we may state that Ukraine guarantees provision of both medical aid and services which are evidently different legal categories. After comparison with use of different criteria we identified that medical aid and services are mutually reinforcing when it comes to content – latter may be the component of the former phenomenon. We chose subjective composition to be another criterion of comparison – medical aid may be provided by professional staff and persons with certain duty to provide emergency aid as part of their activity. In contrast to that, medical services are provided by state and municipal healthcare facilities including higher educational establishments and individual entrepreneurs with relevant license for medical practice. Patient will always be the receiver of relevant services – more detailed analysis of patients’ classification shows that one more criterion must be considered while comparing medical aid and services – payment.

Permanent residents get medical aid free of charge while persons who temporary stay within the territory of Ukraine have to pay for it. Also, medical service is provided for each person at a cost except of cases when state is the requestor and certain amount is allocated in the budget (exclusively for permanent residents). The following criterion thus is the financial guarantee in the format of state support for provision of medical service/aid which may be individually ensured (independent payment or compensation through medical insurance system).

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