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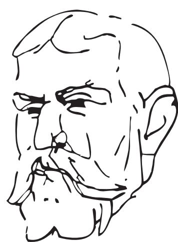

Memory of
dr Władysław
Biegański

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REVIEW ARTICLE

PUBLIC AUTHORITIES AND LOCAL SELF-GOVERNMENT BODIES COOPERATION IN THE FIELD OF HEALTH CARE DURING THE COVID-19 PANDEMIC: UKRAINIAN EXPERIENCE

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ABSTRACT

The aim: To characterize cooperation of public authorities and local governments in the field of health care to identify problems that arise when providing free medical care to citizens of Ukraine through state and municipal health care facilities under conditions of COVID-19.

Materials and methods: The methodological basis of the research is the general methods of scientific cognitivism as well as concerning those used in legal science: methods of analysis and synthesis, formal logic, comparative law etc. The norms of the adopted new legislation of Ukraine, as well as the practice of its application are analyzed.

Conclusions: The following proposals for amendments and supplements to the legislation of Ukraine are substantiated: lack of clear definition of the role of hospital councils within the legislation of Ukraine; providing health care facilities that have separate buildings and isolation of COVID-19 patients; provision of medical aid to COVID-19 patients by a family doctor; establishment and functional activity of ambulance crews in the newly formed united territorial communities; ect.

KEY WORDS: patient, free medical aid, state-guaranteed medical care package, state health care institution, municipal health care institution

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INTRODUCTION

Since 2014, Ukraine has been reforming local self-government and territorial organizations of power, and since 2015, the Government of Ukraine has initiated transformational reform of the health care system, also, since 2018 Ukraine has been reforming the health care financing system [1-3]. The acute respiratory illness COVID-19 caused by the coronavirus SARS-CoV-2 has become an indicator of the effectiveness of these reforms and it has demonstrated once again the necessity for consolidation of efforts from public authorities and local governments to prevent pandemic, ensure accessibility and quality of health care in local communities.

Thus, the study of Ukraine's experience within interaction of public authorities and local self-government bodies in the field of health care is relevant up to date, being as well theoretically and practically mature.

THE AIM

To characterize cooperation of public authorities and local governments in the field of health care to identify problems that arise when providing free medical care to citizens of Ukraine through state and municipal health care facilities under conditions of COVID-19.

MATERIALS AND METHODS

The methodological basis of the conducted research is the general methods of scientific cognitivism as well as concerning those used in legal science: methods of analysis and synthesis, formal logic, comparative law etc. The norms of the adopted new legislation of Ukraine, as well as the practice of its application are analyzed. It is also emphasized upon own and delegated powers in the field of health care, referred to the executive bodies of village, township, city councils.

REVIEW AND DISCUSSION

Ukraine is the unitary state. Local self-government is the right of a territorial community — residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city — to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine [4].

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According to the Constitution of Ukraine the material and financial basis for local self-government is movable and immovable property, revenues of local budgets, other funds, land, natural resources owned by territorial communities of villages, settlements, cities, city districts, and also objects of their common property that are managed by district and oblast councils. On the basis of agreement, territorial communities of villages, settlements and cities may join objects of communal property as well as budget funds, to implement joint projects or to jointly finance (maintain) communal enterprises, organizations and establishments, and create appropriate bodies and services for this purpose. The State participates in the formation of revenues of the budget of local self-government and financially supports local self-government. Expenditures of bodies of local self-government, that arise from the decisions of bodies of state power, are compensated by the state (Article 142) [4].

In the Constitution of Ukraine it is stated: «Certain powers of bodies of executive power may be assigned by law to bodies of local self-government. The State finances the exercise of these powers from the State Budget of Ukraine in full or through the allocation of certain national taxes to the local budget, by the procedure established by law, transfers the relevant objects of state property to bodies of local self-government. Bodies of local self-government, on issues of their exercise of powers of bodies of executive power, are under the control of the respective bodies of executive power» (Article 143) [4].

According to the Law of Ukraine "On Local Self-Government", the executive bodies of village, settlement, and city councils are responsible for: a) their own (self-governing) powers; b) delegated powers (Article 32) [5].

The National Health Service of Ukraine procures medical services and medicines under the program of medical guarantees and reimbursement [6]. Health care facilities are being financed today with "the money following a patient" basis [7]. During the COVID-19 pandemic this principle proved its effectiveness. First, the health care facility receives funds exclusively for the services it provides, according to the tariff for them. As a result, financial funding is transferred to health care facilities that provide major aid to a greater number of patients and accordingly they work more intensive. Since the population density and the number of cases of COVID-19 population from region to region are different in Ukraine, this principle promotes rational use of funds, and also makes it possible to increase the amount of money quicker, under agreements with the National Health Service of Ukraine, to direct greater funds to those health facilities that accept greater number of patients. Second, it has been identified what public authorities and what health care facilities owners are responsible for.

Thus, the administration of the health care institution which is in communal (public) ownership and the owner of it (the district health care institution is owned by local governments, which, in particular, can allocate funds to make their hospital more and more technologically equipped, being able to provide better medical services) bear responsibility for material and technical equipment supply of the hospital, and also for consumables availability.

International documents: changing the paradigm of interaction of public authorities and local self-government.

The right for life is an absolute right, that the state is obliged to ensure. The right to health is one of the fundamental human rights. It is reflected in international documents of universal and regional status: Universal Declaration of Human Rights 1948 [8], International Covenant on Economic, Social and Cultural Rights 1966 [9], International Covenant on Civil and Political Rights 1966 [10], Declaration on the Rights of Persons with Disabilities 1975 [11], Declaration on the Rights of Persons with Mental Disabilities 1971 [12], etc.) and of regional nature (Convention for the Protection of Human Rights and Fundamental Freedoms 1950 [13], European Social Charter (revised) 1996 [14], etc.).

On December 14, 2020, the UNGA adopted Resolution 75/130 "Health of the World Population and Foreign Policy: strengthening the resilience of the health system through affordable medical aid for all" [15]. The Resolution impose legal obligations onto the member-states: they are to take all necessary steps, including ones of legislative and administrative nature, regardless of the level of economic development. First of all, this lawfully normative act reaffirmed the importance of national ownership. The Resolution is such a signal: the objective necessity for in-depth cooperation in the field of healthcare is explained by importance of this type of activity for each person, people – citizens of the state of all nationalities, society. The Resolution also reaffirmed the central role and responsibility of governments at all levels – public authorities and local self-government – in defining their own path to universal health coverage, taking into account national circumstances and priorities.

The UNGA urged Member States to strengthen national health systems by ensuring affordable medical aid for all, with a focus:

1) on first medical aid;
2) the availability of physical and financial accessibility of quality health services as well as safe, effective, affordable and essential medicines, vaccines, diagnostic devices and medical technologies.

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Likewise, the UNGA recommends that Member States:
1) implement highly effective strategies to protect people's health and take full account of the determinants of health through inter-sectoral work using approaches that involve all government agencies and mainstream health in all policies;
2) to pursue effective health financing policies, including through close collaboration between relevant authorities, including financial and health authorities;
3) to pursue a policy of more efficient allocation and usage of resources with adequate financing on for the first medical aid, innovative financing.

So, the UN established new international legal requirements for national health systems, which changed the paradigm of interaction between public authorities and local governments in foreign countries during the period Covid-19 pandemic, but they did not change the paradigm – ensuring the human right to quality medical care is the main responsibility of the state. The state performs these responsibilities via public authorities and local governments. If the public authorities and local governments do not do this effectively, it will mean that the state does not fulfill the duty to defend the right to health protection, medical care.

The involvement of community residents into the local decision-making processes in health care sphere.

O. Shevchenko and V. Romanova rightly emphasize, that cohesion presupposes the involvement of community residents into the local decision-making processes in health care sphere, as well as increasing the state's ability to meet the needs of citizens [16]. Thus, because of the application of the social cohesion in France, developed medical system was created, in which, for example, the number of places in intensive aid wards is twice as high as in Italy.

So, due to the implementation of the social cohesion, the role of the territorial organization of government and local self-government within the formation of health policy is growing.

The Ministry of Health of Ukraine is in charge of the establishment and functioning of hospital districts. One hospital district is to be placed on the territory of one region. "There was a kind of "centralization" of hospital districts. This has been done in order to ensure the development of health care facilities on the regional level, a network of facilities in accordance with the needs of the population, as well as to create effective, efficient patient routes, in particular in connection with the agreements on medical care for the population institutions have to contract. For example, we understand that the facility has a contract for a heart attack insult, and local authorities must ensure that patients can get right into these facilities, which have equipment and specially taught medical staff, as the Chairman of the NSZU Andriy Vilensky points out [17]. Matviy Khrenov, a health care expert, rightly emphasizes that the hospital district and the enlarged district are fundamentally different entities: "the enlarged district is an administrative entity with prescribed regulations, and its clearly assigned powers [17]. Instead, the hospital council is only an advisory body. «Volodymyr Krasyokha, Chief physician of Voznesensk Multidisciplinary Hospital (Mykolaiv Region), underlines that "decisions of the hospital council are submitted to the governor for signing, so they cannot be advisory. This is going to be an order to execute» [17].

According to Eva van de Rakt and Florian Christl «… uncoordinated measures have exacerbated social inequality ..., hampered democratic decision-making processes and struck the principle of social cohesion» [18].

FUNDING FOR COMMUNITY HEALTH CARE FACILITIES

The National Health Service of Ukraine has the right to directly finance a health care institution through the contract [19; 20]. Also, as it has been mentioned above, the decision to increase or decrease funding except financing transferred directly from the National Health Service is made by the owner. Therefore, in order to solve the problem of the lacking of doctors in the context of the COVID-19 pandemic, the Nizhyn City Council, for example, allocates a plot of land to an anesthesiologist who is coming from another city and builds a house for him to live in. In Mena town (Chernihiv region), local authorities built a 6-apartment house and invited doctors from Chernihiv.

However, in Ukraine there are medical institutions of communal (public) ownership which are not be switched into a new form of work, like payment for medical care in accordance with the contract concluded to the National Health Service of Ukraine at the tariff of the relevant package of medical aid provided due to inconsistency of health care facilities, understaffing, etc. The owners of such communally owned health care facilities do not have funds within the local budget to allocate them for the renewal of material and technical base provoking interest of medical personnel to work in particular institution. The consequence of this fact becomes a social tension, as well as the fact that the residents of the territorial community are deprived of the opportunity to receive affordable and quality medical aid in accordance with the state-guaranteed packages of free medical care[1].

[1] Payment on for health care institution for medical services provided is implemented by the National Health Service of Ukraine in accordance with the agreement concluded with this institution.

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Similar situation was considered by the Court in the case of the Center for Legal Resources on behalf of Morita Malak and others vs. Romania: improper care and treatment, as well as inadequate, poor hospital living conditions directly contributed to the untimely deaths of five patients [21]. In the Resolution of the European Court of Human Rights in the case of the Center for Legal Resources on behalf of Valentin Campeanu vs. Romania dated 17 July, 2014, it is stated: "... the Court established, that the Article 2 (right fir life) of the Convention was violated from material and procedural points of view. In particular, it was consolidated that Valentin Campeanu stayed at medical institutions that were not supplied with necessary equipment to ensure proper care for his condition; the fact is about his being transferred from one department to another without an established diagnosis; and that the authorities did not provide him with adequate treatment in regards of antiretroviral therapy. Authorities, being aware of this difficult situation as for lack of staff, malnutrition and lack of central heating around the psychiatric hospital premises where he was transferred, unjustifiably endangered his life" [22; 23].

In Austria a single network of inpatient and out-patient institutions was established, regardless of their subordination and ownership [6]. The developed tariffs for medical services eliminate price competition between hospitals, which stimulates them to increase the quality of work. In Estonia, a system of contractual relations is used in which the Health Insurance Fund concludes contracts only with selected medical organizations - the most effective service providers are selected. So, the main tool for quality control of the services provided is the conduct of audits, a comprehensive assessment of the performance of medical institutions.

According to the decision of the Constitutional Court of Ukraine in the case of free medical care free health care in Ukraine and communal health care institutions does not exclude such opportunities through the financing of this industry through the development of extra-budgetary mechanisms to raise additional funds, including through the establishment of hospital mutual help cash desks (unions, funds), which activities should be regulated by law [24].

PROVIDING MEDICAL AID TO COVID-19 CONTAMINATED AND OTHER PATIENTS

As in Austria, Estonia, such uniform tariffs for medical services under state guarantees are implemented in Ukraine to eliminate price competition between hospitals for medical services included in the "package". Since June 1, 2020, the following state-guaranteed medical care packages have been applied: primary health aid; emergency medical aid; acute myocardial infarction; acute stroke, provided in stationary hospital conditions; four packages for COVID-19 treatment. At the initiative of the National Health Service of Ukraine, health care facilities were divided into two groups: 1) health care facilities that provide medical aid to COVID-19 patients [25]; 2) health care facilities that provide medical care to patients who are not ill for COVID-19 [26; 27]. Health care facilities of the first group must have the appropriate number of staff and equipment to provide care to patients with any manifestations of the disease of any severity, as well as to enter into an agreement with the National Health Service of Ukraine. Such facilities receive funds from the National Health Service of Ukraine according to the tariff [28; 29]. Under these agreements, the institution is to be provided with medicines, consumables, as well as additional payments of up to 300% to medical staff who work directly with COVID - 19 patients.

In case that a health care facility has not entered into a contract for a COVID-19 treatment package with the National Health Service of Ukraine, this establishment may provide medical aid to patients, who are not ill for COVID-19 only. Today, the National Health Service of Ukraine has an agreement on inpatient package for the treatment of COVID-19 with 437 health care facilities [28]. The total network of inpatient health care facilities in Ukraine is more than one thousand institutions. Instead, it will will stimulate these hospitals to increase the quality of work performance [3].

SURCHARGES FOR MEDICAL STAFF

According to the agreement concluded by the health care institution for the inpatient COVID-19 package with the National Health Service of Ukraine, a 300% surcharge is provided for the team of physicians working with COVID-19 patients. To provide inpatient care to COVID-19 patients, the health care facility must have minimum of four teams of 12 people each, consisting of three doctors and three health employees per doctor (48 people). In practice, many health care facilities do not increase the number of teams (for example, to 5, 6, 7 and more), but include at least 4 teams of more doctors and health professionals [28]. For example, there may be 4 teams, but medical employees are not 48, but more (56, 96, 120, etc.) [28]. This increase in doctors and health employees in the teams, rather than the teams themselves, means that there is a lack of funds for surcharges for doctors and medical employees. In this case, the issue of deficit surcharges comes to the attention of the owner and head of the health care in-

stitution, but to the National Health Service of Ukraine. The National Health Service of Ukraine has simplified the requirements for teams: if a health care institution has four teams with an anesthesiologist, the institution can create more teams, where there can be any set of medical doctors.

Visit of the family doctor to the patient's home, establishing and functioning of ambulance crews within the newly formed united territorial communities

The decision to visit the patient's place or not is to be made by the family doctor himself [29]. The doctor's work should be optimized [3; 30]. If a patient needs urgent medical aid, an ambulance is to arrive to the patient's and provide all necessary medical aid or hospitalize the patient· he State guarantees the package of urgent medical aid as well as the package of primary medical aid [31; 32]. The family physician uses remote communication methods and thus provides medical aid to COVID-19 patients. If a local community or health care facility sees the need to create an ambulance crew, Ukrainian law does not prohibit this. Some primary aid centers create regular teams that work on weekends, as well as round-the-clock teams (contact center, teams that can arrive on call). However, the National Health Service of Ukraine reimburses the costs of medical care only in accordance with the concluded agreements with the health care institutions and within the framework of the tariffs of the state-guaranteed package of free medical care.

PROVISION OF HEALTH CARE FACILITY WITH OXYGEN

According to Eva van de Rakt and Florian Christl Germany's general resource readiness for such crises and the application of the social cohesion principle played perhaps the most important role in confronting the epidemic. The high level of development of the healthcare system, the availability of appropriate material and financial resources allowed Germany to prepare its system and society for resistance to the coronavirus epidemic through relatively short time [18]. Moreover, Germany itself has become an international aid donor and an active player on the front in the fight against the epidemic [33].

The responsibility for providing oxygen to the health care facility laid upon its administration. Taking into account that the demand for oxygen has increased tens and hundreds of times, and the Ukrainian oxygen market is not able to meet this demand, the heads of health care facilities and local governments cannot solve this problem just by themselves. This issue needs to be addressed at the State level. Licenses to supply oxygen to businesses have been intensified, leading to an increase in the number of such suppliers.

CONCLUSIONS

1. The UN established new international legal requirements for national health systems, which changed the paradigm of interaction between public authorities and local governments in foreign countries during the period Covid-19 pandemic, but they did not change the paradigm – ensuring the human right to quality medical care is the main responsibility of the state.

According to the practice of ECHR the Article 2 (right for life) of the Convention was violated from material and procedural points of view if public authorities and local governments, being aware of a difficult situation as for lack of staff and the availability of appropriate material and financial resources , unjustifiably endangered people life: there were improper care to COVID-19 and treatment, inadequate, poor hospital living conditions, person stayed at medical institutions that were not supplied with necessary equipment to ensure proper care for his condition; person transferred from one department to another without an established diagnosis.

2. The high level of development of the healthcare system, the availability of appropriate material and financial resources allowed Germany to prepare its system and society for resistance to the coronavirus epidemic through relatively short time. In Austria and Estonia the main tool for quality control of the services provided is the conduct of audits, a comprehensive assessment of the performance of medical institutions.
3. In Austria, Estonia, Ukraine some common problems remain unsolved: the formation of an effective model of health care financing; promoting greater access to medical aid to COVID-19 contaminated and other patients.

The following problems that arise when providing free medical aid to citizens of Ukraine in state and municipal health care facilities in the conditions of COVID-19, the solution of which requires consolidation of efforts of public authorities and local governments are as follows: the functioning of hospital districts; financing of health care facilities; lack of clear definition of the role of hospital councils within the legislation of Ukraine; providing isolation of COVID-19 patients patients; providing health care facilities that have separate buildings and isolation of COVID-19 patients patients, planned medical care when establishing quarantine and the introduction of enhanced anti-epidemic measures in areas with significant spread of acute respiratory dis-

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eases and COVID-19 caused by coronavirus-SARS-CoV 2; increase the number of doctors and health employees in the teams that provide inpatient care to COVID-19 patients instead of the practical necessity and expediency of increasing the number of these teams; provision of medical aid to COVID-19 patients by a family doctor, establishment and functional activity of ambulance crews in the newly formed united territorial communities; providing oxygen to health care facilities.

The following ways of solving these problems in Ukraine are proposed: 1) to establish the legal responsibility of officials of public authorities and local governments for violating the Law of Ukraine "On State Financial Guarantees of Medical Care of the Population" when developing regional budgets, district budgets, budgets of territorial communities, district budgets in cities; 2) clearly specify in the legislation of Ukraine the mechanism for controlling the distribution of funds by hospitals and the legal liability of hospitals and chief doctors for violating them; 3) specify in the legislation of Ukraine the mechanism for monitoring the formation of the list of necessary medical equipment by state and municipal healthcare institutions and specify in the legislation of Ukraine the mechanism of the involvement of community residents into this processes; 4) specify in the legislation of Ukraine the mechanism for monitoring the purchase of necessary medical equipment by state and municipal healthcare institutions and specify in the legislation of Ukraine the role and the mechanism of the involvement of community residents into this mechanism for monitoring the involvement of community residents into the local decision-making processes in health care sphere; 5) to increase the additional revenues for health care financing in general (specify in the legislation of Ukraine the official direct payments of the population for medical services of secondary importance, to develop the territorial community savings programs, to specify in the legislation of Ukraine the mechanism for government medical loans and local medical loans).

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