

# THE NATURE OF LEGAL RELATIONSHIPS ON GRANTING MEDICARE IN UKRAINE

**Sibilla Bogdanivna BULETSA**, candidate of legal sciences, associate professor

*In this article we substantiated that the right for medical help is the element of the personal unproperty legal relationship regulated by an institute right on the unproperty blessings, relations on the granting of Medicare make the object of the civil legal adjusting. Identified the civil legal signs of relations on the granting of Medicare. We analyzed different scientists opinions concerning the place of medical relations in civil law.*

**Keywords:** Medicare, system of health, doctor, patient, Civil Code of Ukraine, Hungary.

*В этой статье мы доказали, что право на медицинскую помощь является элементом личных неимущественных правоотношений, которые регулируются таким же образом, как и другие личные неимущественные блага, а отношения по предоставлению медицинской страховки составляют объект гражданско-правового регулирования. Мы определили гражданско-правовые признаки правоотношений по предоставлению медицинской страховки. Также мы проанализировали различные научные мнения относительно места медицинских правоотношений в гражданском праве.*

**Ключевые слова:** медицинская страховка, система здравоохранения, доктор, пациент, Гражданский кодекс Украины, Венгрия

Actuality of problem of the legal adjusting of Medicare is related to the different approaches of lawyers and doctors to understanding of different phenomena on granting Medicare with the simultaneous strengthening of legal control of quality of medical services, providing of defence of human rights at interference with the sphere of someone's health.

The analysis of current legislation, legislative practice, scientific researches testifies that quite a bit blanks are in adjusting of relations, related to providing of right on granting Medicare, and relations in the system doctor–patient need more detailed legal decision.

These days deep scientific researches about legal nature of relations and agreement on granting Medicare are absent which does not answer growth of necessities

\* Buletsa Sibilla Bogdanivna is candidate of legal sciences, associate professor of department of civil law, vice dean of law faculty “Uzhgorod national university”.

of citizens on participating in these relations. Development of the private system of health protection also is a shove to expansion of market of granting medical services, and this point shows up the actuality of this article. The purpose of this article is a necessity to define nature of legal relationships on granting Medicare and find out their features.

Character of legal relationships in the field of granting Medicare is a debatable object. In legal literature one can find different points of view in relation to particular branch belonging of relations, related to the granting of Medicare. In opinion of I.A. Pokrovskiy, it is conditioned by the fact that in different epochs relations on health protection were regulated either by norms of public or private (civil) right.<sup>1</sup> Together with that a question of decision of a particular branch belonging of relations on granting of Medicare is important, as it determines legal position of subjects of relations, methods of the legal influencing on them, facilities of defence of the violated rights.

Civil legal relations, foremost, are the mean of adjusting of relations between the participants of civil relations, and that is why they come forward as civil relations well-regulated (well-organized) by the norms of right. Possibility of electing of that or other way is related to the fact that the civil legal method of the legal adjusting includes both dispositive and imperative elements.<sup>2</sup>

In dependence on functions and tasks, which appear before the certain field of law they can be divided into two basic kinds: 1) regulatory legal relationships are such legal relations through which the direct adjusting of public life — establishment of rights and duties is carried out and others like that; 2) protective legal relationships — the ones which „design” criminal, administrative, disciplinary and other types of legal responsibility, application of other legal approvals, — and are limited to this.<sup>3</sup>

In legal relationships, where civil law of the authorized personality (right on a health) is the main thing, which is answered by the duty of other person or persons not to violate this right (legal duty of passive type), the object of legal relationships in many cases has an independent value. Exactly in relation to it civil legal relationships are formed. Death of object means stopping or change of the proper civil legal relationships. For example, natural death of patient, in the case of granting of high-quality Medicare by the doctor which is the object of personal non property legal relationships means that regulative civil legal relationships stop existing. Death of patient, health and life of which is the object of the personal unproperty legal relationships because of the fault of other person (doctor), that is giving of low quality Medicare means that the regulative civil legal relationships of property change into the protective civil legal relationships of indemnification of moral harm.

---

1 Покровский И.А. Основные проблемы гражданского права. — М., Статут, 2001. — С.104.

2 Харитонов С.О., Старцев О.В. Цивільне право України. Підручник. — Вид. 2, перероб. і доп. — К.: Істина, 2007. — С.65–67

3 Скакун О.Ф. Теория государства и права: Учебник. — Харьков: Консум; Университет внутр. дел, 2000. — С.397; Теория государства и права: Учебник / Под ред. В.К. Бабаева. — М.: Юристъ, 1999. — С.415

It is known that a health of man is the inalienable blessing which belongs to him since his birth until the moment of death. The activity on granting of medical services is directed on the health maintenance and restoration. An important role in adjusting of this activity is played by a civil law. In the Civil code of Ukraine it is represented in the article 901, which includes an agreement about granting of services. Unfortunately, it is not specified what types of services this article spreads on. Most research workers refer here medical services. In the Civil code of Russia in article 128 and 779.2 the institute of granting of requiring payment services is included in the circle of the legal adjusting, where medical services are directly attributed to the article of the legal adjusting. It is a first attempt in Russia to regulate medical services by a civil legislation as an independent type of services. To the signs of civil legal agreement one should refer the fact that mutual will of sides is expressed in an agreement, and also that it is the concerted actions of subjects, directed on achievement of certain civil legal consequences: origin, change, stopping of civil legal relationships.

In Civil Code of Hungary 6:487. § based Health Insurance contract of insurance in case of illness of the insured services specified in the contract to meet the commitment. Insurance services cover the reimbursement of expenses incurred in use when receiving healthcare services specified in the contract by healthy persons.<sup>4</sup>

Health is the basis of vital functions of personality and is the immaterial blessing, the right on which is constitutional. It is realized in a civil law as the equitable personal unproperty right law which is inseparable from the transmitter and can not exist outside them, and consequently is such which is not alienated.<sup>5</sup> Although a right on the protection of life and health is absolute (it is referred to by the duty of unlimited circle of persons not to hinder realization of right), it does not eliminate the possibility of realization of separate plenary powers of transmitter of right by entering of subjects into absolute relationships with the elements of relative ones.

Thus, a health, which is the immaterial blessing, inseparable and inalienable from personality and can not be terminated by any grounds, comes forward as the object of civil legal relationships on granting of Medicare. The proprietor of right on health has a right to own, to use, to dispose his or her body, he can independently enter into relationships with other people on any terms. When a patient enters into contractual relations in relation to his health, he passes certain control over his or her body to medical establishment (to the doctor). The purpose of patient is to get certain positive changes of the state of health (recovery) or certain perfection of the body is (plastic operations), first of all to his or her opinion. Non-fulfillment of contractual obligations by medical establishment is the foundation for indemnification of moral harm to the patient.

---

4 Polgári Törvénykönyv: Törvény 2013 V évi // Электронный ресурс: [Режим доступа]: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1300005.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300005.TV)

5 Савицкая А.Н. Возмещение ущерба, причиненного ненадлежащим врачеванием./ А.Н. Савицкая. — Львов.: Изд.-во при Львов. Гос. Унив. «Вища школа», 1982. — С.31

Analysis of item 201 of Civil Code of Ukraine testifies that the personal unproperty blessings are the object of protective civil legal relationships, and relations which are formed in connection with the use of the personal unproperty blessings are the object of the civil legal adjusting. Thus the object of regulatory civil legal relationships are not unproperty rights by themselves, but conduct of people and relations of people, related to such rights, — with realization of own rights (rights on health) or with the observance of rights of other people (not to harm the health of other people).

It should be noted that in the days of existence of the soviet state, Medicare was given mainly free of charge, except for a small quantity of medical services, which made an exception from the general rule of free of chargeness of not only Medicare but also medical services. It resulted in the fact that some research workers, referred the relations concerning the granting of free Medicare to the administrative law. Administrative law nature of relations on granting of medical services was based on the fact administrative law norms prevailed in the Bases of legislation about a health protection in 1969. One refers the following features to the peculiarities of administrative law agreement: inequality in the legal field of participants of relations (relations of power and submission), adjusting of relations by the acts of state administration, administrative responsibility for non-fulfillment of contractual terms, administrative consideration of disputes.<sup>6</sup> It should be noted that relations between a doctor and patient are built on principles of equality, a person can get paid Medicare if desired, and the free of charge Medicare here is an alternative which provides constitutional rights on life and health protection. In the noted relations both subjects — a patient and medical establishment are seen as levels which is the characteristic sign for civil legal relations. The signs of imperious submission are absent, a patient has the right to take part in his own treatment. In addition, Medicare can be given to a man only according to his or her desire, with the exception of cases when a duty to treat oneself is set by the law. Consequently, the reference of relations on granting of Medicare to the administrative law finds out their inconsistency with general principles of administrative law. According to A.M. Savickaya, a will of a man is judicial fact in case of occurring of relations on the granting of Medicare, the absence of which hinders the origin of these legal relationships.<sup>7</sup> Within the limits of mutual relations of doctor (medical establishment) and patient, granting of Medicare, in particular its quality and volume, can be conditioned by the sum of the money prepaid by a patient (in the cases when one is talking about the granting of paid services).

E. Tolstaya notes that, taking into account a role and value, features and specific of medical activity, it should be noted, that relations between physicians and patients in most cases can not be well-regulated by the norms of civil law. Many-

---

6 Основы медицинского права: Курс лекций учеб. Пособие для вузов / Г.Р. Колоколов, Н.В. Косолапова, О.В. Никульникова — М.: Узд.-во «Экзамен», 2005. — С.44

7 Савицкая А.Н. Возмещение ущерба, причиненного ненадлежащим врачеванием./ А.Н. Савицкая. — Львов.: Изд.-во при Львов. Гос. Унив. «Вища школа», 1982. — С.116

sided activity of medical sphere also goes beyond the scopes of norms of social and administrative right. Taking into account such specific lines of Medicare, it comes to the conclusion, that there are grounds for official recognition of medical right as the independent field of law and that a sphere of health protection is a producer and guarantor of health as an economic resource. Health protection is instrumental in saving and recreation of basic creative force of society — person, its main “economic” value for society of long and complete capacity.<sup>8</sup> Examining relations which are formed between medical establishment and patient, one should start from the fact that medical interference is always an interference into the sphere of private life. No economical tasks will be able to compel a man to rescue his own life or health, if he does not wish it. Therefore, in accordance with an article 3 of CC of Ukraine one of general principles of civil legislation is impermissibility of self-willed interference to the sphere of the personal life of man. The personal unproperty rights of physical personality, including the right for medical help, do not have economic content.

А.І. Савицка in her research marked that relations on the granting of Medicare were an object of civil legal regulation. Thus she derived it from the fact that the accomplishment of a certain need of a person is provided with the help of civil legal method of regulation of this group of relations.<sup>9</sup> A.O. Sirotkina also supported an idea that characteristics of the civil law method of regulation are inherent to the relations on the granting of medical services. In particular, the patient and medical establishment as independent and even subjects are the participants of the relations. Thus the state which is allotted by the forced power does not take part in a legal relationship. For qualification of the noted relations as civil legal it is not important whether services are given due to facilities of patient, medical establishment, insurance organization or budget, as a source of financing is not the determining criterion of structure of relations between sides. While determining of the place of legal relationships in the system of legal regulations two basic descriptions are taken into account: method of construction of relations between subjects and method of their adjusting. The probed relations are built on equality of subjects with decentralization of relations. In addition, satisfaction of necessities of citizens in medical service takes place not only due to budgetary facilities. There exist paid clinics, health centers which give first aid, and other types of specialized help for the money of patients. One attributes these services to the subject of civil law.

Exploring legal nature of relations on granting of medical services, A.O. Sirotkina correlates the characteristics of service as object of civil laws with essence of medical service and comes to the conclusion about complete accordance of the noted categories. In fact a favour as family category is the object of civil law. In particular she attributes the granting of Medicare to the signs of medical service, which aim

---

8 Толстая Е. Медицинская деятельность, ее социально-экономический аспект и правовые основы регулирования. / Е Толстая. // Право Украины. — 2002.-№5. — С.15-17

9 Савицкая А.Н. Возмещение ущерба, причиненного ненадлежащим врачеванием./ А.Н. Савицкая. — Львов.: Изд.-во при Львов. Гос. Унив. «Вища школа», 1982. — С.29

is to improve the health of a patient and consists of activity of doctors and other medical personnel concerning diagnostics, electing of ways of treatment and conducting of treatment. The positive consequences of treatment can not be assured, as both the objective phenomena and properties of organism of patient influence them. Activity on the granting of medical services has property character, because it creates a certain economic effect such as satisfaction of people's needs on the receipt of skilled Medicare. Medical service is directly related to personality of a doctor, its quality depends on his level of knowledge, skills and qualification. And, finally, at the granting of medical service material result is absent in most cases.<sup>10</sup>

Strong and healthy physician–patient relationships are cornerstone of an effective health care system. Emerging Canadian jurisprudence has embraced this notion by continuing to emphasize their unique and “trusting” nature. While legal principles, such as fiduciary law, clarify the need for physicians to identify and address potential conflicts of interest, they also reemphasize the tensions that cost containment has placed on the medical profession. Indeed, Canadian physicians in the future might find themselves faced with financial incentives to incorporate resource allocation policies into their clinical decisions, scenario already faced by the many American physicians practising under managed care. Such developments create complex conflicts of interest that go to the heart of the traditional duties that flow from the physician–patient relationship.<sup>11</sup>

One should mention that the right for medical help is regulated in article 284 of the Civil code of Ukraine, where it is noted that:

- a physical person has a right on granting of Medicare;
- a physical person who reached fourteen years and appealed for granting of Medicare has a right to choose a doctor and methods of treatment in accordance with his recommendations;
- the granting of Medicare of a physical person who reached fourteen years is conducted according to his or her will;
- an adult capable physical person who realizes the value of his or her actions and can manage them has a right to refuse treatment;
- in an emergency, at presence of the real threat to life of physical person, Medicare is given without the consent of physical person or his parents, guardians, trustees;
- Medicare is given to a child, regardless of his consent, consent of parents guardians;
- Medicare is given to an disabled physical person regardless of consent of guardian.

---

10 Сироткина А. О правовой природе договора оказания медицинских услуг — в кн.6 актуальные проблемы гражданского права: Сб. статей. — вып.8 / Под ред. О.Ю. Шиловхоста.- М.: Норма, 2004. — С.124

11 Timothy Caulfield. Legal aspects of the physician–patient relationship Considerations during health care reform in Canada./ Т. Caulfield. // Электронный ресурс: [Режим доступа]: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2255104/pdf/canfamphys00070-0015.pdf>

The rights on the attaining and saving the information concerning the patient information, the right of a patient who is on stationary treatment on socializing with the members of family, other public and private figures (notary, priest), other personal unproperty rights for a patient in the field of freedom and private life are closely connected with the mentioned above rights.

In relations on the granting of Medicare the obliged subject is medical establishment which can not accomplish its duty on the granting of Medicare out of legal relationship.<sup>12</sup> Thus, human rights, related to medical interference, surely, are the constituent of it private life, and relations on the granting of Medicare make the object of the civil legal adjusting. Conclusively, the public legal element exists in the noted relations, but it is in control from the side of the state on the state medical industry, its financing, observance of standards of quality of Medicare, introduction of the ramified system of medical establishments and others like that.

Thus, as a right for medical help is the element of the personal unproperty legal relationship regulated by an institute right on the unproperty blessings, relations on the granting of Medicare make the object of the civil legal adjusting.

Taking into account the above mentioned, one can select the followings civil legal signs of relations on the granting of Medicare:

1. Legal equality of sides, one of which is a patient and the other is a medical establishment, in contractual relations on the granting of Medicare and their non subordination to each other.
2. Free choice by the patient of a doctor and methods of treatment.
3. Presence in both sides of equitable civil rights and duties in the case of violation of which, there is possibility of application of civil liability and appeal to the court for the protection of the violated right.
4. Legal relationships on granting of Medicare are regulated by the norms of civil legislation and agreement.
5. The granting of Medicare has a purpose to improve the health of a patient and its restoration, which depends on the level of knowledge and experience of a doctor.
6. A positive result of treatment can not be fully assuredly by a doctor or medical establishment, a result depends on the individual features of body of a patient.
7. A material and property result is absent at the granting of Medicare.
8. The state does not take part and does not interfere in legal relationships between a doctor and patient.

---

12 Савицкая А.Н. Возмещение ущерба, причиненного ненадлежащим врачеванием./ А.Н. Савицкая. — Львов.: Изд.-во при Львов. Гос. Унив. «Вища школа», 1982. — С.32.