

## ADMINISTRATIVE AND LEGAL ASPECTS OF THE SETTLEMENT OF RELATIONS IN THE FIELD OF MEDICAL SERVICES

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**Abstract:** *The field of medicine is developing quite rapidly in the modern world, especially in socially developed countries. Given the objectivity of the problems faced by Ukraine in the period from its independence to 2014, public interest in the need to reform the domestic health care system has grown day by day. The analysis of all attempts to reform the health care system of Ukraine also showed that the health care system did not deviate from Soviet principles and did not have a positive impact on demographic data. The relevance of this article is due to the fact that the quality of medical services is one of the main indicators of the effective functioning of the health care system. The purpose of the article is to conduct research on the specifics of medical services in Ukraine and the world, as well as to study the prospects for the introduction of a contractual mechanism for regulating relations in this area. Leading research methods are general and special research methods, in particular methods of logic, analysis, comparison, etc. The results of this study are to outline effective ways to implement a medical contract in Ukraine and its impact on the state of medical services in Ukraine. The significance of the results is reflected in the fact that this study can serve as a basis for outlining future changes to current legislation of Ukraine on the functioning of the health care system and the introduction of a contractual settlement mechanism.*

**Keywords:** Medicine, governance, agreement on provision of medical services, primary care, family doctor, medical and administrative reforms in Ukraine.

Medicine is one of the main branches of the state, which should guarantee society the fulfilment of its target function by health authorities. The main criterion for these services is quality, which is the aspect that underpins national health policy. This aspect is determined by many components, namely: quality management (purpose, goals, principles, methods, structures, organization, planning), organization of the process of providing medical care and its resource provision (logistical, methodological, personnel, financial, etc.), implementation of technologies, modern guidelines, standards, clinical protocols<sup>1</sup>.

After Ukraine gained its independence until 2014, the Ministry of Health of Ukraine and health care facilities still worked according to an outdated system that

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<sup>1</sup> T. Yamnenko, "Medical reform: realities of Ukraine and international experience", in *Legal Bulletin*, 2018, vol. 1, p. 116-119; A.A. Chumak, I.V. Abramenko, N.I. Bilous, I.A. Filonenko, O.V. Kostin, O.Y. Pleskach, J. Yanko, "Persistent infections and their relationship with selected oncologic and non-tumor pathologies", in *Journal of Immunotoxicology*, 2010, vol. 7, no. 4, p. 279-288.

was relevant during the Soviet era<sup>2</sup>. Of course, such a system could not cope with the new load, because modern problems need modern solutions. That is why 2014 was the year when the idea of a complete reform of Ukraine's health care system was considered more globally. The initiative to develop a strategy for reforming the health care system of Ukraine arose in August 2014<sup>3</sup>.

There have been repeated attempts to reform Ukraine's health care system. In the work "Reforming the health care system in Ukraine: Strategic Aspects" (the first attempts to reform the health care system have been made since 1991: 1) in the period from 1999 to 2007 the concepts of health care development and directions of necessary changes were developed. At this time, scientists have proposed a number of reform strategies and measures, including the reorganization of public hospitals into non-profit enterprises; 2) in the period from 2008 to 2014, certain steps were taken towards the implementation of systemic reforms in health care<sup>4</sup>. The Resolution of the Cabinet of Ministers of Ukraine of June 13, 2007 No. 815 approved the National Plan for the Development of the Health Care System of Ukraine for 2008-2010, updated the Law of Ukraine "On the Fundamental Principles of the Ukrainian Health Legislation", however, significant reforms and radical changes that would increase life expectancy, reduce mortality and morbidity in Ukraine have not taken place<sup>5</sup>.

During the establishment of Ukraine as a new, independent and sovereign state, our health care facilities did not move away from the Semashko system – a system that provided funding for health care facilities based on the number of beds<sup>6</sup>. In the days of the Soviet Union, this system was quite organic and expedient, because many more people than now lived in the villages, and in the cities, there were no private hospitals that would compete with public health facilities<sup>7</sup>. Such a health system functioned in USSR and was relevant half a century ago. The urgency of this problem is due to the long-term systemic

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<sup>2</sup> V.V. Myrhorod-Karpova, "Peculiarities of family medicine functioning and provision of medical services: experience of the European Union and lessons for Ukraine", in *Legal Horizons*, 2021, vol. 26, no. 39, p. 35-45.

<sup>3</sup> S. Buletsa, L. Deshko, V. Zaborovskyy, "The peculiarities of changing health care system in Ukraine", in *Medicine and Law*, 2019, vol. 38, no. 3, p. 427-442.

<sup>4</sup> A. Barzylowych, "Health care reform in Ukraine: strategic aspects", in *Investments: Practice and Experience*, vol. 2, p. 136-140.

<sup>5</sup> Ye. Sobol, T.R. Myroniuk, Yu. Harus, V. Myrhorod-Karpova, "Implementation of Family Medicine in Central and Eastern Europe: Experience and Lessons for Ukraine", in *Journal of the History of Culture and Art History*, 2020, vol. 9, no. 1, p. 69-83.

<sup>6</sup> A. Mechanic, "Pyramid of Semashko", in *Expert Journal*, 2011. Available at <https://expert.ru/expert/2011/30/piramida-semashko/>

<sup>7</sup> O.V. Olynyk, M. Rorat, W. Barg, "Oxygen metabolism markers as predictors of mortality in severe COVID-19", in *International Journal of Infectious Diseases*, 2021, vol. 103, p. 452-456.

demographic crisis<sup>8</sup>, the features of which are determined by the following factors (hereinafter according to the State Statistics Committee of Ukraine):

1) Continuous population decline (from 51.9 million people in 1991 to 41.9 million people in 2020), with the scale of depopulation (annual loss of an average of about 300 thousand people).

2) The high mortality rate (the number of live births in 1991 is 630.813 people, while the number of deaths is 669.960 people, for comparison, in 2014 – 465.883 were born and 632.296 died, while in 2019 – 308.000 live births, almost twice less than the dead – 581.000 people).

3) The average life expectancy and its wave-like dynamics is the lowest among the developed countries of the world, in particular, among almost all European countries: 1991 – 69.56 years, 2014 – 71.37 years, 2019 – 72.01 years<sup>9</sup>.

Ukraine needed immediate and radical elimination of problems in the health care system<sup>10</sup>. And the first step towards this was the development of the National Strategy for Reforming the Health Care System of Ukraine for the period of 2015-2020, which provides for the following tasks for the medical system: 1) strengthening primary health care, taking into account the factor of how the health care system of the Soviet era was inherited, namely: the citizens could be served only by the doctor who represents the hospital to which the person is registered<sup>11</sup>. Thus, the primary care unit needed the transformations proposed by the strategy. The main changes would be that the family doctor was recognized as an autonomous entity and the patient had absolute freedom to choose his / her family doctor, regardless of the place of residence; 2) the strategy also provided for the reform of the hospital network, which would provide for the creation of a hospital network of each region; 3) public health, which includes the reorienting the system from total control to increasing responsibility for maintaining health<sup>12</sup>; 4) emergency service. The following results were expected to be obtained: modernization of the dispatching system and creation of a call-centre, expansion of the network of substations, creation of emergency departments, introduction

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<sup>8</sup> Zh.K. Burkitbaev, S.D. Raisov, A.A. Turganbekova, I.R. Ramilyeva, D.U. Yakiyaeva, D.K. Baimukasheva, S.A. Abdrakhmanova, E.B. Zhiburt, “HLA Alleles in Kazakhstan and in the global genofund”, in *Gematologiya i Transfuziologiya*, 2015, vol. 60, no. 2, p. 52-56.

<sup>9</sup> Demographic Yearbook. *Population of Ukraine in 2019. State Statistics Service of Ukraine*, 2019. Available at <https://bit.ly/2N3TlqS>.

<sup>10</sup> B.Y.F. Fong, “Equitable healthcare systems”, in *Medicine and Law*, 2021, vol. 40, no. 4, p. 547-558.

<sup>11</sup> E.S. Baımyshev, K.B. Abzaliev, “A rare form of internal hernia”, in *Vestnik kibirurgii imeni I. I. Grekova*, 1986, vol. 137, no. 9, 81-82.

<sup>12</sup> Z.K. Burkitbayev, S.A. Abdrakhmanova, A.A. Turganbekova, I.R. Ramilyeva, D.K. Baimukasheva, “Detection of the HLA-DQB1 allele, DQB1\*03:82, in a Kazakh patient with acute myeloid leukemia”, in *HLA*, 2017, vol. 90, no. 3, p. 181-182.

of Western treatment protocols<sup>13</sup>; 5) the dental care branch of medicine must maintain its isolation<sup>14</sup>.

### Theoretical overview

International experience provides an opportunity to emulate and strive for the level of those countries that have successful indicators in the field of health care, but the foundation of this success is the basic model of the health care system. In general, as M.M. Buchkevych notes, that the following basic models of health care systems are distinguished in the world: 1) the state system based on the Beveridge concept, which is financed mainly from budgetary sources. The payment for medical services is made from the main revenues of the state. This form of health care system includes Great Britain, Canada, Ireland; 2) budget-insurance, which operates at the expense of targeted contributions of the entrepreneur, working citizens and state subsidies. Medical services are paid for by contributions to the health fund. The simplest example of such a contribution is between an employer and an employee. Contributions depend on solvency, and access to services depends on demand. Funding from extra-budgetary health insurance funds predominates in Germany (78%), Italy (87%), France (71%), Sweden (91%), Japan (73%) and other countries; 3) private business, financed by the sale of paid medical services, as well as by voluntary health insurance. The insured population pays a premium to the insurer, the amount of which is determined by the expected average cost of services provided by him, and those exposed to greater risk, pay more. Such a system operates in countries such as the United States, South Korea, the Netherlands<sup>15</sup>.

In general, the vast majority of countries are inclined to either the budget insurance system or voluntary health insurance, from which it can be concluded that European countries prefer the presence of insurance in the health care system. H. Tlusta notes that in world practice there are two forms of health insurance: compulsory and voluntary. Compulsory health insurance is one of the

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<sup>13</sup> A.P. Getman, "Human life and health as an object of environmental law in the globalised world", in *Journal of the National Academy of Legal Sciences of Ukraine*, 2020, vol. 27, no. 1, p. 189-200.

<sup>14</sup> T. Syroid, Y. Kolomiets, O. Kliuiev, V. Myrhorod-Karpova, "International financial institutions as subjects of the financial system of the state", in *Asia Life Sciences*, 2019, vol. 2, p. 153-164.

<sup>15</sup> M.M. Buchkevych, "Experience of health insurance in foreign countries", in *Scientific Bulletin of NLTU of Ukraine*, 2011, vol. 21, p. 178-183; N. Yessimov, A. Aringazina, G. Tokmurziyeva, N. Izmailova, D. Seidumanov, "Assessment of the integration between primary health care and public health in Almaty", in *Research Journal of Pharmacy and Technology*, 2019, vol. 12, no. 9, p. 4241-4249; N. Galvanetto, A. Perissinotto, A. Pedroni, V. Torre, "Fodis: software for protein unfolding analysis", in *Biophysical Journal*, 2018, vol. 114, no. 6, p. 1264-1266.

most important elements of the social protection system in the field of health care and obtaining the necessary medical care in case of illness<sup>16</sup>.

This type of medical care is popular in Germany, where the social health insurance system is considered one of the most developed systems in the world. If consider German health insurance in general, then absolutely all citizens first have an insurance contract with a company that acts as a mediator between the family doctor and the patient, and secondly, all these citizens are entitled to the same quality care, regardless of their insurance type. Ukraine and Germany are somewhat similar in the general sense of the legal system of the state, but if to look at the level of development and success of such an institution as health care, they are generally two diametrically opposed systems. The Ukrainian system of medicine lags far behind world trends and norms.

According to the information certificate prepared by the European Information and Research Centre at the request of the People's Deputy of Ukraine on the international experience of health care reform, it is noted that the peculiarities of the health care system in Austria are such that in this country there is social insurance, which provides services in the following cases: illness, disability, pregnancy and childbirth, unemployment, old age, death of a breadwinner. 98% of the population of Austria have health social insurance. In case of illness, the insured person has the right to contact any doctor who works with this insurance company. The doctor must, within the established economic limits, choose the treatment that he / she deems necessary, or refer the patient to another specialist in the clinic.

The experience of Estonia is also interesting, as the Estonian health care system before the reform was similar to the Ukrainian one. One of the most successful medical reforms among the post-Soviet countries was implemented in Estonia. In a relatively short time, the principles of medical financing were changed and autonomy was given to clinics. In ten years, the country has created a new health care system, which is not inferior to other European countries. Estonia uses a system of contractual relations, in which the health insurance fund concludes contracts only with selected medical organizations. The most efficient service providers are selected. The Health Insurance Fund is obliged to enter into contracts with hospitals<sup>17</sup>.

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<sup>16</sup> H. Tlusta, "Medical insurance in reforming the health care system of Ukraine", in *Bulletin of Taras Shevchenko National University of Kyiv*, 2014, vol. 3, p. 65–70; A. Tlemissov, B. Zhunissov, M. Buleshov, A. Buleshova, S. Seidinov, K. Sultanbekov, A. Talgatbek, T. Bulegenov, A. Myssayev, A.M. Grjibovski, "Does the number of injuries among elderly people in Kazakhstan increase during Ramadan?", in *Public Health*, 2017, vol. 142, p. 70-72.

<sup>17</sup> Information of the European Information and Research Center, 2020. Available at <https://bit.ly/3oNkwnC>.

## Materials and methods

The following methods were used in the research process: general theoretical (analysis, synthesis, concretization, generalization, method of analogy, modelling); empirical methods (research of experience of the functioning of the medical services systems in Ukraine and abroad, research of normative-legal and scientific-methodical literature on the given question, scientific researches and conclusions).

Comparing Ukrainian and foreign experience in organizing and providing medical services, it is obvious that Ukraine has someone to emulate<sup>18</sup>. European experience shows that with the right approach to health care reform, it is quite possible that domestic medicine will reach the world level. Such a striking example is Estonia, which also had an outdated Soviet system of health care management, but in 10 years was able to radically change the approach to the management of medicine and, of course, the quality of medical services. Modern Ukraine has some problems with the reform of the health care system, the main of which is the lack of a legally established relationship between doctor and patient, which further causes the problem of improper and poor performance of their duties as a doctor<sup>19</sup>. Foreign experience has shown that the desired goal, namely the quality of medical services, can be achieved only if the model of the health care system is completely reformed and contractual relations are established<sup>20</sup>.

Family medicine, which came to Ukraine after the reform, is an abstract and incomprehensible concept for most citizens. This is probably due to the unspecified legal relationship between the doctor and the patient. In this regard, the family doctor acts as a bearer of rights and obligations provided and guaranteed by law and the state. But it is necessary to determine whether he / she is in this case the subject of administrative-legal relations. A. M. Horbach notes that the subjects of administrative and legal relations are state bodies, primarily executive bodies, as well as internal parts of their staff, bodies of public organizations, whose activities are regulated by law. The subjects of these relations

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<sup>18</sup> Yu.V. Baiun, "Problems of development of the medical industry in Ukraine in the context of the decentralisation reform", in *Scientific Bulletin of Mukachevo State University. Series "Economics"*, 2021, vol. 8, no. 1, p. 86-95.

<sup>19</sup> O.V. Kuzmenko, M.O. Kashcha, R.V. Marchenko, "Structural modelling of the relationship between the vulnerability of Ukrainian regions to COVID-19, environmental status and factors of readiness of the medical system", in *Scientific Bulletin of Mukachevo State University. Series "Economics"*, 2021, vol. 8, no. 2, p. 123-130; A.O. Gavrilov, S.M. Seĭdinov, A.A. Iusupov, "Structural and clinical characteristics of elderly and senile patients' treatment in regional surgical hospital", in *Khirurgiia*, 2011, vol. 6, p. 56-59.

<sup>20</sup> T. Syroid, Y. Kolomiets, O. Kliuiev, V. Myrhorod-Karpova, "International financial institutions as subjects of the financial system of the state", in *Asia Life Sciences*, 2019, vol. 2, p. 153-164.

should be recognized and structural units of enterprises, institutions, organizations (e.g., manufactory, faculty, hospital, etc.)<sup>21</sup>.

Studying the issue of defining the range of subjects of administrative relations, O.V. Skochyliias-Pavliv argues that one of the important subjects of legal relations arising in the field of health care is a medical worker, whose work is directly related to the implementation of the right guaranteed by the Constitution of Ukraine<sup>22</sup> to health care, medical assistance and medical insurance. However, the issue of the legal status of health professionals as a set of rights, duties and responsibilities remains one of the most problematic and needs to be addressed immediately through the adoption of appropriate laws<sup>23</sup>.

The draft Law of Ukraine “On primary health care on the basis of family medicine” dated 22.06.2017 No. 6634, in our opinion, is quite thorough and the only thing that can clearly outline the subject of primary care. Article 8 of this draft Law states that the subjects of primary health care are:

1) health care institutions and their structural (separate) subdivisions, regardless of the form of ownership and organizational and legal form, providing the organization and provision of primary health care to the population;

2) primary health care specialists who conduct business activities in medical practice as private entities-entrepreneurs and may be in civil relations with health care institutions that provide the organization and provision of primary health care to the population<sup>24</sup>.

According to the fact that the subject of legal relations can be considered a natural or legal person who is a participant in legal relations that arise in the field of health care, the family doctor, according to the analysis of research scientists is a subject of legal relations.

According to leading scholars, the subject of legal relations is the bearer of rights and responsibilities. According to A.V. Kudria, a family doctor as a subject of administrative relations has the right to: independently diagnose and determine the tactics of the patient in accordance with established standards; to appoint methods of laboratory and instrumental diagnostics necessary for complex inspection of the patient; to involve, if necessary, doctors of other specialties for consultations, examinations and treatment of patients<sup>25</sup>.

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<sup>21</sup> A.M. Horbach, “Subjects of administrative and legal relations”, in *Scientific Bulletin of Public and Private Law*, 2016, vol. 1. p. 172-174.

<sup>22</sup> Constitution of Ukraine, 1996. Available at <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>23</sup> O.V. Skochyliias-Pavliv, “Legal status of medical workers: problems of administrative and legal regulation”, in *Law and Society*, 2019, vol. 5, p. 92–97.

<sup>24</sup> Draft law of Ukraine on primary care on the basis of family medicine, 2017. Available at <https://bit.ly/38KzTrD>.

<sup>25</sup> A.V. Kudria, “Some problems in the observance of the family doctor's right to effective professional activity (review of scientific literature)”, in *Ukraine, the Health of the Nation*, 2014, vol. 1, p. 72–75; N. Galvanetto, “Practical applications of atomic force microscopy in biomedicine”, in *STEMedicine*, 2020, vol. 1, no. 2, p. 1-15.

According to the fact that the family doctor, as a subject of legal relations, is endowed with rights and responsibilities. The main ones are: direct provision of primary health care to patients; providing medical care to patients in an emergency; referral in accordance with the patient's medical indications; formation and control of the implementation of the plan of examinations and treatment<sup>26</sup>; coordination of work with other parts of medical care and other responsibilities provided by the Ministry of Health of Ukraine on its official website. Because the doctor has rights and responsibilities, he / she must also be held legally liable for non-performance or improper performance of his duties. As practice shows, the vast majority of health professionals and even heads of health care facilities have a superficial idea of the legal liability established by current legislation for health offenses. At the same time, knowledge of the grounds, types and consequences of legal liability, on the one hand, disciplines health professionals, and on the other hand – reduces the likelihood of unjustified prosecution<sup>27</sup>. The problems of legal liability of physicians for professional offenses should be paid much more attention, according to the official website of the Ministry of Justice of Ukraine. The complexity of all criminal cases against doctors is the presence of a significant number of evaluation concepts (in particular, the impossibility of unambiguously determining whether the doctor's actions were appropriate or inappropriate, whether the health worker performed the duties in full or superficially, etc.), which are to be established by conducting a series of investigative actions<sup>28</sup>.

The family doctor, as a subject of legal relations, is endowed with a list of responsibilities for the improper performance of which, provided by legal liability, the family doctor provides those services that are guaranteed by the Constitution and Laws of Ukraine. Therefore, they may be held legally liable in accordance with their responsibilities and awareness of their actions. But bringing a family doctor to justice is generally rare and difficult to prove.

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<sup>26</sup> N. Yessimov, N. Izmailova, D. Yessimov, "Integration of primary healthcare and public health", in *International Journal of Electronic Healthcare*, 2021, vol. 11, no. 4, p. 289–306; A.K. Zhumalina, E.Z. Bekmukhambetov, B.T. Tusupkaliev, M.B. Zharlikasinova, "Development of scientifically justified proposals on the prevention and treatment of environmentally determined constitutional growth delay in children in the West Kazakhstan region", in *Environmental Geochemistry and Health*, 2019, vol. 41, no. 3, p. 1251–1265.

<sup>27</sup> T. Shlapko, V. Myrhorod-Karpova, L. Myskiv, V. Vasylynchuk, B. Pavlenko, "Suicide as a global Human problem: way to take over", in *Journal of Gender and Interdisciplinarity*, 2020, vol. 1, p. 205-220; D. Chyzhov, "The system of organs of state power for securing the rights of the people in the sphere of national security", in *Law Journal of the National Academy of Internal Affairs*, 2021, vol. 11, no. 2, p. 18-23.

<sup>28</sup> Ye. Filonenko, "Bringing doctors to justice", in *Legal Newspaper*, 2020, vol. 7, p. 12-15.



## Results and discussion

Ukraine's health care system has faced many problems, which are unfortunately growing rapidly. Society does not feel protected by the state or by the laws that regulate medicine. This is due to the inefficiency and short-sightedness of health care reform.

In order to solve this problem, it is necessary to eliminate the declaration as a regulator of the relationship between the patient and the doctor, and to intensify the implementation of the agreement on the provision of medical services between the patient and the primary care physician. Ya.V. Novokhatska assures that the contract is an agreement of two or more persons on the establishment, change or termination of civil rights and obligations. Free expression of the will of the parties to a contractual relationship is one of the manifestations of freedom of contract as one of the principles of civil law. The parties are free to enter into a contract, choose a contractor and determine the terms of the contract, taking into account the requirements of the law, business practices, the principle of reasonableness, good faith and fairness<sup>29</sup>.

The conclusion of such an agreement on the provision of medical services will solve the problem of lack of liability in the previous agreement and subsequently bring the quality of services provided by primary care physicians to a high level, because, as noted by I.S. Aleksiev, the contract has such properties that will serve as a guarantor of conscientious and legally established relationship between the patient and the doctor. To better understand the agreement between the patient and the doctor, we can enumerate its main features: personalized character; voluntary conclusion; common interests; equality of the parties; agreement of the parties on all aspects of the contract; mutual responsibility of the parties for non-performance or improper performance; fulfilment of commitments; legal support<sup>30</sup>.

The presence of such properties in the contract with the doctor is the foundation of effective work of primary care in Ukraine and quality provision of medical services by family doctors. In order for the contract to be effective and capable of regulating the relations it establishes, it must have a clearly defined and understandable content for both parties. Article 628 of the Civil Code of Ukraine<sup>31</sup> states that the content of the contract is the conditions (items) determined at the discretion of the parties and their agreement, and the conditions that are mandatory in accordance with the acts of civil law. In our opinion, the basis of such an agreement between the patient and the doctor on the provision

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<sup>29</sup> Ya.V. Novokhatska, "Civil law contract as a regulator of civil relations", in *Civil Law and Civil Process, Commercial Law*, 2015, vol. 1, p. 88–93.

<sup>30</sup> I.S. Aleksiev, "The concept and functions of a civil contract", in *Law Forum*, 2010, vol. 3, p. 7–10.

<sup>31</sup> Civil Code of Ukraine, 2003. Available at <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

of medical services by a family doctor should be defined in the content of the subject of the agreement. O.V. Moroz argues that the subject of the contract may be property, intellectual property, certain obligatory rights, actions that the debtor is obliged to perform in favour of the creditor or other persons or to refrain from certain actions.

The subject of the contract must be specifically defined and available for determination by third parties. It must contain information about the specific thing, right, action in question, determine the name (range) of property (goods), works, and their number, so that any person can conclude what exactly the parties have agreed. Defining the subject of the contract between the patient and the doctor – is the foundation for its further content and structure<sup>32</sup>. Therefore, the subject of the contract for the provision of medical services should be the provision of medical services that will be consumed during the period of medical activity<sup>33</sup>.

In order to be sure of the validity of the contract for the provision of medical services, it must specify the obligations for both the executor and the customer of the contract for the provision of medical services, with which they agree, as well as the responsibility of the parties between whom the contract for the provision of medical services was concluded<sup>34</sup>, so that in case of non-compliance or improper performance of the contract, the parties are liable under the laws of Ukraine. Of course, the contract for the provision of medical services must also specify such items as circumstance of insuperable force, conditions of confidentiality of information, terms of the concluded contract, price and order of payment for services, in case of concluding such a contract with a family doctor of a private hospital and other conditions of the contract.

The content of the contract for the provision of medical services should, in the first place, fix the rights, duties and responsibilities of both parties. To protect the rights of both the doctor and the patient, and if necessary to facilitate the appeal to the court by protecting the rights, because it gives an explanation to all categories, which is not defined in the legislation. The contract between the patient and the doctor must include legal support and basis. Due to common interests and mutual responsibility, this document will be able to regulate the relationship between patient and doctor, which is the basis of this work.

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<sup>32</sup> O.V. Moroz, “The subject of a civil contract”, in *Law and Innovation: Scientific and Practical Journal*, 2020, vol. 1, no. 29, p. 40-45; I. Hora, O. Batiuk, “Individual issues of protection of critical infrastructure: foreign experience”, in *Social and Legal Studies*, 2021, no. 1, p. 132-139.

<sup>33</sup> E.S. Baĭmyshev, K.B. Abzaliev, T.S. Karibekov, “Prevention of postoperative eventration” in *Vestnik Khirurgii Imeni I.I. Grekova*, 1988, vol. 141, no. 7, p. 119-120.

<sup>34</sup> O.M., Yaroshenko, V.M. Steshenko, H.V. Anisimova, G.O. Yakovleva, M.S. Nabrusko, “The impact of the European court of human rights on the development of rights in health care”, in *International Journal of Human Rights in Healthcare*, 2021. Available at <https://www.emerald.com/insight/content/doi/10.1108/IJHRH-03-2021-0078/full/html?skipTracking=true>

It was unclear to the majority of the population what the mechanism of family medicine would look like. Primary medicine from the time of Ukraine’s independence until its reform was a continuation of the Soviet model of health care, which in almost 25 years has become commonplace and completely normal for society. But the mechanisms of providing primary care before and after the reform of the Semashko system were radically different<sup>35</sup>.

By introducing the reform of family medicine proposed to us in the national strategy for health care reform in Ukraine, we were to receive a new mechanism for the functioning of primary care. A key change in family medicine would be the principle: money will “go” for the patient, which means replacing the budget funding of the institution with the purchase of services from the institution for budget funds. The mechanism of providing medical services by primary care now works as follows: first, the patient finds a primary care physician. These can be paediatricians, therapists and family doctors. It is important that a person can choose not at the place of registration. The easiest step is to find a place to live. The patient concludes a declaration with this doctor on the intent to be treated, and the specialist begins to guide the patient. It is important that the doctor can be changed an unlimited number of times. After the patient signs the agreement, he / she provides documents – passport data and, if desired, an identification code. The doctor registers the person in a single electronic register. The main and most unusual thing for the patient is that he should always consult only a family doctor.

De jure reform has a progressive view of the human health system that is designed for people and has no flaws, but to find out how it is de facto, we need to analyse how it works in real life, not on paper. A survey was conducted among 188 people aged 18 to 45, during which they were asked the following 7 questions about the effectiveness of primary care reform listed in Table 1.

**Table 1: The results of the survey in the study**

No.	Question	Answer 1	Answer 2
1.	Did you make a declaration with your family doctor?	88% – yes	12% – no
2.	How often do you go to the family doctor with whom you signed the declaration?	33% – 3-5 times / year	67% – up to 3 times / year
3.	Is it easy to connect and make an appointment with your family doctor?	17% – yes	83% – no
4.	Have you ever been unable to contact your family doctor and had to see other doctors?	73% – yes	27% – no
5.	How would you rate the quality of care provided by your family doctor?	14% – satisfied	79% – dissatisfied

<sup>35</sup> A. Mechanic, “Pyramid of Semashko”, in *Expert Journal*, 2011. Available at <https://expert.ru/expert/2011/30/piramida-semashko>

			(7% – could not answer)
6.	Have you prosecuted your family doctor who did not provide you with medical care?	1% – yes	99% – no
7.	Are you satisfied with the state of primary care after the reform?	20% – yes	80% – no

After analysing the answers of the participants of this survey, which was conducted as part of our study, we can conclude that in the end we did not receive quality services by primary care, based on unsatisfactory responses of people who participated in the survey, namely: difficulty in establishing contact with the family doctor, the compulsion to turn to other doctors because of this problem; low quality of services provided by the family doctor; low number of cases of family doctors being prosecuted for non-provision of medical services and dissatisfaction with the state of primary health care after the reform. As a result of the above-mentioned shortcomings, the problem of the COVID-19 pandemic has also appeared, which seems to have exposed the reformed primary care system and the health care system in general, and has shown everything as it is. We encountered problems such as:

–difficulty in accessing an appointment with the family doctor, probably due to the fact that the doctor has a large number of patients. According to the information provided by the official website of the Ministry of Health of Ukraine, the doctor has the optimal number of patients (for a therapist – 2000, for a family doctor – 1800, for a paediatrician – 900). Of course, it is impossible to provide quality medical services to everyone, or at least basic on-call consulting;

–ignorance of the rights and responsibilities of both patients and doctors, because with the advent of this reform, society was not informed about what to expect from the new approach to primary care. Thus, neither doctors are aware of all their rights and responsibilities, nor patients who have signed declarations with their doctor;

–lack of actual bilateral responsibility for the actions performed both by the doctor and the patient. If the doctor does not realize that for failure to provide or for improper provision of medical services he / she will be prosecuted, then of course, the quality of services provided will be low. The same with the patient: if the patient does not realize that his / her actions or inaction in the course of treatment will not be performed, then both the patient and the doctor will suffer. Therefore, the prescribed and legally established responsibility of the doctor and the patient is almost one of the main priorities of the relationship between doctor and patient.

## **Conclusions**

Medicine in Ukraine, based on our research, has undergone repeated reforms, each of which had its shortcomings and needed the repeated changes, this situation is obviously due to short-sightedness and lack of analysis and work on errors. But the need of society to receive quality medical services has become more and more, so the first step was to develop a national strategy for reforming the health care system of Ukraine for the period 2015-2020.

The first stage of the reform was family medicine, to implement the first step of the reform of the health care system of Ukraine, a number of regulations were introduced to regulate the new mechanism of primary health care.

The main changes have been that now the patient chooses the doctor independently, and the doctor receives money accordingly only for those patients with whom he / she concluded the declaration. Funding for primary health care has remained public, but funding goes through the newly established National Health Service of Ukraine. During the study of the material, the main problem during the implementation of the first stage was the understanding that the declaration between the doctor and the patient has no legal security, and therefore the doctor has no legal responsibility in the declaration for improper performance of their professional duties.

The contractual relationship between the patient and the doctor will be able to solve one of the most global problems of the health care system: not high-quality provision of medical services. After all, if we have a document and a regulatory framework that will regulate this issue, we will be able to avoid this criterion of "poor quality". Implementation of contractual relations through a legal mechanism will avoid regressive demographic indicators and improve the situation with the quality of medical services provided by primary care physicians, which will allow Ukraine to later reach the European level of standards of medical services.

## **Recommendations**

In order for the contract for the provision of medical services to be valid and fulfil its intended function, it is crucial to have an effective and functional legal mechanism. In our opinion, the first step towards the implementation of contractual relations in primary care should be a standard form of contract for the provision of medical services developed by the Ministry of Health of Ukraine, after which it should be approved by the Cabinet of Ministers of Ukraine. This will allow to legislate the content of the contract. The standard form of the contract on rendering of medical services with in advance defined conditions will actually act as the contract which text will be taken for the conclusion of contracts with doctors. The developed contract must contain an explanation of the clause regarding the responsibility of the parties. After all, in case the terms of the

contract are violated, a simple and clear way of bringing to justice is needed, this way should be in the contract for the provision of medical services.

The second step is to introduce a new mechanism for concluding a contract for the provision of medical services. We believe that this procedure of contractual relations will be as follows: a patient who wants to enter into a contract for the provision of medical services must contact the doctor of his / her choice. The second step will be to review the model health care agreement and discuss all its details. If the patient or physician wishes to add or agree on something to this document, they have the right to make, add or change, if necessary, some clauses of this contract for the provision of medical services. But in fact the approval of the standard form of the contract and will be the approved content of the contract for the provision of medical services. If the parties are familiar with and agree to the terms of the contract, they can sign it, after which the family doctor has the right to provide primary care.

And the third step should be to expand the powers of the Ministry of Health of Ukraine. The extension of powers is to allocate a new direction in the activities of the Ministry of Health, which would monitor the implementation of the terms of the contract. And if the terms of the contract are not fulfilled, it would implement a really effective mechanism for bringing the parties to the contract to justice. The newly created National Health Service of Ukraine could be engaged in this direction, provided that either its powers are expanded or a new department is established in this service. Such a condition could give both doctors and patients confidence in the legal force of the contract and the impossibility of evading the terms of the contract for the provision of medical services. All this together should ensure the functioning and conclusion of contracts for the provision of medical services.