HEALTH SYSTEM STATUS AS AN INDICATOR OF THE REALIZATION OF THE RIGHT TO HEALTH CARE

Vitaly V. Goncharov
Hussein Vakhaevich Idrisov
Irina Viktorovna Sukhinina

ABSTRACT

This study analyses the impact of legal regulation that ensures the realization of the right to health care and medical care on the state of the health system. This study examines the concept and content of the right to health care and paid and free medical care, reveals the concepts of categories of quality and accessibility of medical services, and draws attention to their various aspects. The analysis of the current state of the health system is carried out. Some features of the provision of medical services to citizens are characterized, and the problems of violation of the right of citizens to medical care, the availability and quality of medical care are analysed. The study examines the varieties of health care management models existing in the world practice and reveals their advantages and disadvantages. The conclusion is made about the possibility of using individual elements of the studied models in Russian health care management.

Keywords: Health system. Medical care. Market of medical services. Social insurance model of health care management.

STATUS DO SISTEMA DE SAÚDE COMO INDICADOR DA REALIZAÇÃO DO DIREITO À SAÚDE

Este estudo analisa o impacto da regulação legal que garante a efetivação do direito à saúde e à atenção médica sobre o estado do sistema de saúde. Este estudo examina o conceito e o conteúdo do direito à saúde e da assistência médica remunerada e gratuita, revela os conceitos das categorias de qualidade e acessibilidade dos serviços médicos e chama a atenção para seus diversos aspectos. É realizada a análise do estado atual do sistema de saúde. São caracterizadas algumas características da prestação de serviços médicos aos cidadãos e são analisados os problemas de violação do direito dos cidadãos aos cuidados médicos, da disponibilidade e da qualidade dos cuidados médicos. O estudo examina as variedades de modelos de gestão de saúde existentes na prática mundial e revela suas vantagens e desvantagens. Conclui-se sobre a possibilidade de utilização de elementos individuais dos modelos estudados na gestão de saúde russa.


HE ESTADO DEL SISTEMA DE SALUD COMO INDICADOR DE LA REALIZACIÓN DEL DERECHO A LA SALUD

Este estudio analiza el impacto de la regulación legal que asegura la realización del derecho a la atención de la salud y la atención médica en el estado del sistema de salud. Este estudio examina el concepto y contenido del derecho a la atención de la salud y la atención médica remunerada y gratuita, revela los conceptos de categorías de calidad y accesibilidad de los servicios médicos y llama la atención sobre sus diversos aspectos. Se realiza el análisis del estado actual del sistema de salud. Se caracterizan algunas características de la prestación de servicios médicos a los ciudadanos, y se analizan los problemas de vulneración del derecho a la atención de la salud existentes en la práctica mundial y revela sus ventajas y desventajas. Se llega a la conclusión sobre la posibilidad de utilizar elementos individuales de los modelos estudiados en la gestión sanitaria rusa.

The coexistence of a modern state and society requires sustainable development and functioning of all components of the management mechanism, including the health system (MOKHOV, SVIRIN, GUREEV, KULAKOV & SHESTOV, 2020; PODDOUBNAYA, ZADNEPROVSKAYA, VOEVODINA, ILYINOVA, KHATIT & PANINA, 2021). The health system is the most complex mechanism that ensures the health of both an individual citizen and society as a whole. It is a complex system of socioeconomic and medical measures aimed at preserving and improving the level of health of each individual and the population as a whole. The health system can also be understood as a set of actions aimed at ensuring and maintaining the health of the nation, including such measures as promoting a healthy lifestyle and caring for the environment (NAUMOVA, KRUPKO & MITINA, 2020). The state of the health system largely influences both the economic and social, cultural, political, and other spheres of society and the state. These factors are extremely important since, in modern conditions of economic instability, the question of the need to transform and develop the health system in the Russian Federation arises even more acutely. Modern sociological studies show that the state of the health system satisfies the population only by 39.9% (KISLITSYNA, 2020), which confirms the need for government intervention in this area.

The health system has a complex structure and is a mechanism for maintaining and strengthening the health of an individual and society as a whole, associated with other subsystems and implemented in the political, economic, social, legal, scientific, medical, and cultural spheres of society. One of the principles of its functioning is the observance of the rights of citizens in the field of health care. The proclamation of these rights is not declarative, it is ensured by the adoption and implementation of regulatory legal acts and legal regulation. It creates the legal basis for the organization of medical activities, contributes to ensuring proper quality and universal access of the population to medical services, minimizes the inefficiency of the health system, and contributes to the sustainable pace of its development. The WHO documents emphasize that regulation recently "has grown in importance as a key lever for governments to affect the quantity, quality, safety and distribution of services in health systems" (CLARKE, 2020).

Regulation of the health system, being a function of public administration, presupposes the streamlining of the activities of not only the object of management but also the management process itself, organically integrating into all its functions (PLUGAR & RASTRIGINA, 2020). According to the terminology of the Organization for Economic Co-operation and Development (2015), "regulation is a set of different tools that governments use to set requirements for businesses and citizens. It includes all laws, formal and informal orders, by-laws, administrative formalities, and rules". Regulatory policy is viewed as a set of rules, procedures, and institutions introduced by the government with the direct purpose of development, administration, and analysis of the regulatory process (PERSPEKTIVY RAZVITIIA REGULIATORNOI POLITIKI (PERVYI PROEKT) 2015). The levers of the regulatory policy are the means, methods of direct and indirect influence of state bodies on processes and objects through the prism of the normative legal field, aimed at the development of the economic and social spheres of society. Modern research on the regulatory policy of Russia is mainly related to the regulation of entrepreneurial activity in various spheres of the economy. The report "Regulatory Policy in Russia: Main Trends and Architecture of the Future" provides numerous examples of mismatched and excessive requirements of Russian legislation based on "the principles of large-scale" prescriptive "state intervention in any economic processes", and concludes that it is necessary to revise approaches to the regulation of economic activities, unloading legislation from outdated and redundant norms (GOLODNIKOVA, 2018).

Recently, there has been a steady interest in the study of the issues of law enforcement in the health sector in the scientific community. This interest may be due primarily to the fact that health care is one of the highest priority national projects, on the implementation of which the state of the country’s overall socioeconomic potential depends. Various aspects of health system management have been studied in the works of scientists, such as, T.S. Naumova (NAUMOVA, KRUPKO & MITINA, 2020), E.V. Plugar (PLUGAR & RASTRIGINA, 2020), I.V. Kozlova (KOZLOVA & LAGUTIK, 2018), and others. Nevertheless, some aspects of legal regulation of the health system, including how the right to health care declared and developed in regulatory legal acts of different levels is realized in life and how it is reflected in the state of the health system in the country remain poorly studied.

The purpose of the study is to, based on the results of the analysis, identify areas for improving legal regulation that maximally contributes to the implementation of the declared right to health care. The hypothesis of the study: the model of the effective health system should combine elements of legal regulation of medical services and economic incentives for the subjects of their provision.
**METHODS**

The research methods used in this study include: the method of transition from a general concept to a particular one, content analysis, statistical, system-analytical, comparative-legal, and abstract-logical methods. The theoretical basis of the research is the fundamental provisions of the theory of regulation of the health system and the market of medical services, and publications of scientists on the regulation of relations between participants in the market of medical services, the health system, and the compulsory health insurance system. The information basis of the research is laws, regulations, data from the Federal State Statistics Service of the Russian Federation, and the results of sociological research.

**RESULTS**

The health care of citizens is a system of state measures of a political, economic, legal, social, scientific, and medical, including sanitary and anti-epidemic (preventive) nature. The right to health care is an inalienable constitutional right of every citizen. The right to health care and medical care is guaranteed to every citizen by the Constitution of the Russian Federation ("THE CONSTITUTION OF THE RUSSIAN FEDERATION", 1993) (Part 1 of Article 41). The human right to health care and its maintenance at the maximum permissible level for the current state is reflected in most international documents. Based on the 1966 International Covenant on Economic, Social, and Cultural Rights (INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR), 1966), the participating parties recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (Paragraph 1 of Article 12). The cited provision means that to protect human health, all the achievements of modern science, including new medical technologies, should be applied in treatment (VYDRIN, 2017). The development of modern medical technologies helps the timely detection and treatment of diseases. The result is an effective and significant increase in the duration and quality of life. A large number of diseases that were previously incurable, including oncological ones, in modern times due to high achievements in medicine are chronic, ceasing to be a sentence for humans (KOZLOVA & LAGUTIK, 2018).

One of the norms reflected in Part 1 of Article 41 of the Constitution of the Russian Federation is that medical care should be affordable and of high quality. Only with such indicators will it have a positive effect on human health. In another case, medical care can have a negative impact – one of the main constitutionally protected benefits.

One of the sides of the availability of medical services, it seems, is the possibility of the choice for citizens who want to receive paid medical care in an amount that exceeds the one provided free of charge. For this, paid medical services were introduced in the Russian Federation medical organizations, including state ones, the market for paid medical services is developing rapidly and becoming an increasingly important part of the health system. On the one hand, with the help of paid medical services, quality medical care is being improved, on the other hand, there is a decrease in the volume of free medical care, including due to the flow of qualified personnel to the private sector and the re-profiling of medical institutions taking into account the needs of the paid services market, while the unregulated procedure for setting prices for paid medical services makes them inaccessible to a larger number of citizens (KOZLOVA & LAGUTIK, 2018).

Negative processes in the field of guarantees of the right to health care are interconnected with the establishment of inflated prices for paid medical services by different entities without taking into account the remoteness of the health care institution, the property status of citizens in the territory of a particular municipality.
and other factors that are beyond entrepreneurial benefits (KOZLOVA & LAGUTIK, 2018). Pricing problems are generated not only by the actions of medical workers but primarily by the legislation of the Russian Federation, which does not consider the social function of paid medical services as one of their guarantees of the constitutional right to health care. This circumstance indicates the need for state regulation of the market for paid medical services as part of the health system and a more complete realization of the right to health care.

The so-called principle of equal access to the provision of medical services (medical care) is also associated with the availability of medical care (PUCHKOVA, 2017). It is expressed in the fact that citizens who do not have medical insurance should also be provided with medical assistance at the expense of the budget (and the budget receives taxes on this item from wealthy citizens with an income significantly exceeding the subsistence minimum). This can be achieved in a centralized way, providing for the subordination of the health system to state control.

**DISCUSSION**

Let us consider examples of public health management in countries that are both recognized leaders in the development of medicine and have a socially oriented health system, for example, the health system in the UK. This system is organized in accordance with the rule—a wealthy citizen transfers money for a low-income citizen, a healthy person transfers money for the provision of medical services to citizens in need of treatment. It is with the observance of such a rule that the principle of equal access to medical care for all citizens of the country, even the most unprotected segments of the population, is respected. The advantages of this model also lie in the focus on disease prevention. The doctor is interested in reducing the incidence, whilst in Russia, doctors are interested in long-term illnesses of their patients, since their salary depends directly on the number of people who have applied to them (sick) citizens (HUSBAND & ADAM, 2008).

The disadvantage of this model may be the absence of natural stimulating factors for development. To exclude this, it is necessary to develop stimulating factors that will improve the quality of medical care, the development of new innovative technologies for the production of innovative products. For this, it is necessary to strengthen state control over the circulation of medicines (PUCHKOVA, 2020).

When providing medical services, there is a risk of loss of health and ability to work. In this regard, it is necessary to introduce compulsory medical liability insurance of medical workers into the health system. The state health insurance system ensured the distribution of profits when making payments for the provision of health care through insurance resources. This model exists in Germany, it allows reducing the severity of the risk of disability for the poor. Funding is carried out as follows: 60% go to medical organizations. Funds for the activities of medical organizations come from the compulsory health insurance fund:

- 25% of funds are transferred to provide medical assistance to family members of employees, who are in labor relations with the employer,
- 15% – funds transferred from health insurance, carried out voluntarily,
- 15% – funds transferred through the payment of taxes,
- 10% – funds transferred by citizens as a result of paying taxes (DRÖSCHEL, VOLLMER & WALZER, 2017).

The social insurance model also exists in Canada. Compulsory health insurance of citizens is provided by financing medical organizations carrying out medical activities from the insurance fund. This fund is the only source of funding for medical organizations providing medical care. In turn, this source is accumulated due to the receipt of funds from budget funds, and funds of private insurance organizations, through charity (MCFADDEN, SIMON, KOBEISSI & GERIN-LAJ OIE, 2020).

This model contributes to ensuring the satisfaction of the majority of the population with the quality of medical services provided. Approximately 90% of the population has got access to accessible medical care provided for free (MCFADDEN, SIMON, KOBEISSI & GERIN-LAJ OIE, 2020). This is facilitated by the development of compulsory health insurance, which finances most of the necessary medical services. In addition, it provides for the provision of benefits in the provision of medical care for people in other cities or outside the country. Also, within the framework of this model, it is possible to participate in the regulation of the health care program by the community. In Canada there are two types of insurance. One of them provides for the financing of medical services in the hospital, and the other for the financing of medical services provided by medical workers who carry out their activities in clinics or at home (DRÖSCHEL, VOLLMER & WALZER, 2017).
The international experience, in particular the stimulation of preventive activities of medical workers, insurance of their professional liability, and targeted insurance financing, can be successfully applied in Russia. In addition, the realization of the rights to health care will require the establishment of strict control over medical expenses, which will allow a thorough analysis of all the pros and cons of medical care and medical equipment used in the provision of various types of medical care. This will allow us to summarize the effectiveness of its application and cost. The implementation of the right to health care is hampered by the current situation in which the population’s need for medical services is increasing due to the deterioration in the quality of life due to a decline in production and an increase in unemployment. In this regard, medical organizations need uninterrupted funding.

Realization of the right to health care is also difficult for some categories of citizens, especially when it comes to the provision of paid medical services by private medical companies. These are children, adolescents, disabled people, and citizens of retirement age, that is, unprotected segments of the population since it is these social groups that especially need medical care (PUCHKOVA, 2020). A model that provides only public funding for health care and a model of a free market for health services, operating separately, seem to be ineffective for solving this problem. Its solution will be facilitated by the organization of the health system based on the social insurance model (GOGIBERIDZE, ISAKOV, ERSHOVA & SHULGINA, 2020).

In addition to the proposed areas of legal regulation in Russia, the health system should be based on the principle of the economic interest of doctors in the patient’s health. This principle is that doctors should be rewarded for the actual state of human health (while patients are healthy), thereby paying more attention to disease prevention.

CONCLUSION

Having studied the current state of health care management in Russia and the strategic directions for the development of this sphere, as well as world experience, we can say that the current legal mechanisms for the realization of the right to health care of citizens need transformations and improvements since they cannot satisfy all needs of the population in the field of the health system. A competent government policy in this area will help eliminate many of the existing problems that hinder the sustainable development of this system and allow citizens to meet their health needs to a greater extent. This, in turn, will have a positive effect on other components of the state’s activities, such as economics, politics, social sphere, etc. Studies have shown that the effective health system in the country should be based on state-established legal guarantees of free medical care for every citizen at the highest quality level, the opportunity to use a paid service in the medical services market, which is strictly regulated by the state, as well as on the social insurance model of the state health care management, with elements of economic incentives to achieve certain health indicators of the population. Thus, the hypothesis of the study seems to be proven.

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Kuban State Agrarian University Named after I. T. Trubilin, Krasnodar, Russia. E-mail: niipgergo2009@mail.ru. ORCID: https://orcid.org/0000-0003-3029-4727

Chechen State University, Grozny, Russia. Chechen State Pedagogical University, Grozny, Russia. E-mail: huseyn23@rambler.ru. ORCID https://orcid.org/0000-0002-7008-8904.

Center for Medical Inspection of the Ministry of Health of the Moscow Region, Krasnogorsk, Moscow Region, Russia. E-mail: is1404@mail.ru. ORCID: https://orcid.org/0000-0003-3335-6090.

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