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Constitutional and Municipal Trends in the Reform of the Ukrainian Health Care System⁵

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Abstract

The aim of the article is to offer proposals for reforming and speeding up health care in Ukraine, in particular by comparing the current system with a decentralized system.

The methodology of this research follows basic social science methods (formal analysis, inductive method, deductive method, analogy, synthesis, etc.). With these methods, we address the issues of the health care reform in Ukraine.

The article explores the issue of improving the health care in Ukraine. The Ukrainian government is carrying out two important reforms – a health care reform and a decentralization reform that includes changes in the municipal government. These two reforms have a huge potential for improving Ukraine’s health care system. Such potential remains largely untapped.

Keywords: right to health, health care, medical care, health financing model, public authorities, municipal bodies, local government bodies.

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Konstytucyjne oraz samorządowe trendy w reformie ukraińskiego systemu opieki zdrowotnej⁶

Streszczenie

Celem artykułu jest przedstawienie propozycji reformy opieki zdrowotnej w Ukrainie, zwłaszcza przez porównanie obecnego systemu z systemem zdecentralizowanym.

Metodologia badania jest zgodna z podstawowymi metodami stosowanymi w naukach społecznych (analiza formalna, metoda indukcyjna oraz metoda dedukcyjna, analogia, synteza itd.). Przy pomocy tych metod zajmujemy się kwestiami reformy opieki zdrowotnej w Ukrainie.

Autorzy badają kwestię poprawy opieki zdrowotnej w Ukrainie. Ukraiński rząd przeprowadza dwie ważne reformy – dotyczą one opieki zdrowotnej oraz decentralizacji. W przypadku tej drugiej chodzi o zmiany w samorządzie miejskim. Obie reformy mają ogromny potencjał poprawy systemu opieki zdrowotnej w Ukrainie. Ten potencjał pozostaje w znacznej mierze niewykorzystany.

Słowa kluczowe: prawo do zdrowia, opieka zdrowotna, opieka medyczna, model finansowania opieki zdrowotnej, władze publiczne, urzędy gminy, organy samorządu lokalnego.

⁶ Badania zaprezentowane w artykule są częścią badań Narodowego Uniwersytetu „Odeska Akademia Prawa” nt. *Strategia integracyjnego rozwoju Ukrainy: prawne i kulturowe wymiary* (nr rej. 0116U001842), na lata 2016–2021.

Introduction

Ukraine is undergoing two major controversial reforms. Both of them – which many stakeholders have difficulty accepting – aim to change the Soviet health system legacy. Both of these reforms have continued since Ukraine's independence in 1991.

The first reform targets the health care system. The collapse of the planned economy, and transition toward market values, have created the need to reform Ukraine's health care system. Before 1991, the government decided on the number of the polyclinics and hospitals to fund, their specialization, their location, their staffing, capacity, and so on. The government financed mostly all of their expenses under the "Semashko Model".⁷ Even if service users had to pay for some services, they never paid the full market price. At first, there was no free market, and therefore, no market price. The government heavily subsidized most medicines and other medical outputs. Post-1991, the national budget has not been able to cover all the health system's costs.

The second reform targets decentralization. Ukraine had adopted the highly centralized Soviet model of health care. As the decentralization has progressed, Ukrainian local governments – and particularly their provision of medical and health care – have remained dependent on central government, heavily politicized and not very effective. Both reforms – the reform of health care and that of decentralization – should have been harmonized. They have not been.

The aim of the article is to offer proposals for reforming and speeding up health care in Ukraine, in particular by comparing the current system with a decentralized system.

The methodology of this research follows basic social science methods (formal analysis, inductive, deductive, analogy, synthesis, etc.). With these methods, we address the issues of the health care reform in Ukraine.

The health care system represents a core function in any government structure. Even in everyday discourse, people pay a lot of attention to issues such as the quality and price of health care in their country. Some countries have solid reputations for their affordable yet high-quality medical service (e.g., in the United Kingdom and

⁷ N. Mishyna, O. Surilova, *Constitutional and Administrative Aspects of the Ukrainian Medical Code*, "Wiadomości Lekarskie" 2020, No. 1, pp. 191–195.

Scandinavian countries). Other countries are noted for their high-quality but very expensive medical care (such as in the United States and Israel, particularly for non-citizens). Ukraine fits into neither category.

The National Strategy on Health Reform for 2015–2020 starts with the sad facts about public health care in the country. Chief among them, Ukraine lags far behind its European neighbors, in terms of life expectancy and mortality. Risk factors, such as smoking, obesity, lack of exercise, excessive alcohol consumption, the spread of infectious diseases, and high levels of injury, underlie such a high mortality rate. Ukraine's low GDP per capita also explains such risks. Yet, many countries' governments manage to achieve fairly long life expectancy and low mortality rates – at costs comparable with those in Ukraine.⁸

The project (*Not*) *Free Medicine* showed shocking statistics. The advocacy project, running from April 2016 to April 2017, encouraged changes in Ukrainian health care by analyzing the medical costs, the availability of treatment and patients' attitudes toward existing policies of providing medicines, and finally developing recommendations for improving access to medicines. Their research used qualitative and quantitative research, as well as the results of the national survey *Health Index: Ukraine 2016*, finding that:

- ❑ "91% of hospital patients in 2012 paid for medicines because health care facilities' budgets could not cover such costs
- ❑ 97% of outpatients who were prescribed medication paid for them themselves. However, only 78% bought all medications prescribed. The rest of the sample either bought some of the medicines or did not buy any at all. Patients explain such behavior by citing poverty, they did not need all the medicines (in their opinion), or that the pharmacies they visited did not stock the required medicines
- ❑ 97% of in-patients paid for medicines themselves, while 84% of respondents hospitalized in the previous year found difficulty to pay for their medicines (or could not buy them at all)
- ❑ only 17% of respondents had received medication free of charge at the hospital. Yet, many claimed they had to pay later, once out of the hospital, with 5% having paid up to about US\$20 (or 500 UAH) and with 11% paying more."⁹

⁸ *National Strategy for Health Care Reform in Ukraine for the Period 2015–2020*, <https://moz.gov.ua/strategija>.

⁹ *Free Medicine*, <https://moz.gov.ua/article/statistic/rezultati-doslidzhennja-bezkoshtovna-medicina>.

Presently, the key problem facing the Ukrainian health care system is money. The statistics above show that both patients and the state lack the funds necessary to provide adequate medicines. Municipal bodies, however, have many of the required resources. However, their financial potential remains untapped.

The current stage of the health care reform foresees the government paying the largest share expenses related to health care. Such a strategy continues the Soviet legacy, leaving this legacy enshrined in Ukrainian legislation. One effect to improve the situation came in 2016. The Ukrainian Cabinet of Ministers introduced *Concepts on Health Care Financing Reform*. *Concepts* claim that Ukraine provides the role model for solidarity in health insurance, taking into account global best practices, particularly from Central and Eastern Europe. *Concepts* continue the tradition of the state-led provision of health care funding – paid from tax revenue.

The difference with previous policy lies in the way of spending this money. *Concepts* note that,

budget funds for medical financing [will be] distributed through a new, modern mechanism for strategically procuring medical services. Financing will transition from the itemized expenditures of health care institutions, calculated according to their existing infrastructure (number of beds, staff, etc.), to payment by result (for instance, the number of actually treated cases or the population assigned to coverage) for institutions transit to become autonomous providers of these services, as well as pharmacies as the suppliers of prescription medicines. The principle of “the money follows the patient” will thus be introduced, without bloating the infrastructure of health care facilities and other service providers.¹⁰

At present, patients can receive medicines and “state-guaranteed package of medical care” for free if they come from an official list of prescription-only medicines and procedures and if needed.

Concepts do not mention municipal bodies at all. Neither does the 2020 budget, in which:

- ❑ government provided medical care operates according to procedures laid down by the Cabinet of Ministers of Ukraine (under Article 22)

¹⁰ *Kontseptsiya reformy finansuvannya systemy okhorony zdorov'ya: skhvalena rozporядzhennyam Kabinetu Ministriv Ukrayiny vid 30 lystopada 2016 r. No. 1013-r.*, <https://zakon.rada.gov.ua/laws/show/1013-2016-p>.

- ❑ left-over funds from medical subsidies on April 1, 2020 are transferred onto the accounts of relevant local budgets, for use in modernizing equipment, digitizing public health facilities that provide medical services (in addition to those offering primary care (under Article 19)
- ❑ until 1 April 2020, exemptions to the above terms shall apply to a pilot project in the Poltava region. Such exemptions apply to secondary (specialized) medical care and require co-financing from local governments (Article 23).¹¹

These legislative provisions hold up the promise that municipal bodies will co-finance such ‘packages of medical care’ in the future. The government should roll-out such municipal support in every city, town, and village in the country. Such a roll-out may serve as the final stage of the reform – as specialists urge the finalization of the reform and the argue that such finalization shows government has listened to its citizens and their communities.¹²

Municipal bodies can use statistics to choose the main public health problems to invest in fighting, in response to local needs. For instance, during the COVID-19 pandemic, municipal bodies can offer free vaccinations against the flu, using the vaccines created for the 2020–2021 season. They may use these along with the free vaccination against pneumococcus, using the *Prevnar 13* (Pneumococcal 13-valent Conjugate Vaccine [Diphtheria CRM197 Protein]) for the prevention of pneumococcal pneumonia and the invasive disease caused by 13 *Streptococcus pneumoniae* strains (1, 3, 4, 5, 6A, 6B, 7F, 9V, 14, 18C, 19A, 19F, and 23F). Otherwise, they can use *Synflorix* (PCV10, 10-valent pneumococcal conjugate vaccine), a vaccine that protects against pneumococcal disease caused by at least 10 types of *Streptococcus pneumoniae*. Municipal action can thus allow patients to obtain these vaccines – which are not in the National Vaccination Calendar – for free.

Such municipal financing can make up for the national government’s financial inability to offer these, and many other vaccines, in the National Vaccination Calendar. *The National Strategy on Health Reform for 2015–2020* claims that,

“in 2012, total health expenditure comprised around 7.6% of GDP, a level comparable or even higher than those countries joining the EU after 2004. Such a level exceeded those in countries such as Poland, Romania and Estonia, which provide better coverage of their citizens and obtain get better health outcomes [for their money]. However, in Ukraine, this indicator – in per capita

¹¹ *Ibidem*.

¹² I.S. Demchenko, *Klasyfikatsiya zakonodavstva u sferi okhorony zdorov'ya*, „Scientific notes of TNU named after V.I. Vernadsky. Series: Legal Sciences” 2019, No. 30(6), pp. 7–13.

expenditures terms – comes to only about US\$293 (or 2392 UAH) in 2012, due to its low GDP. Such a level falls well below the US\$3,340 EU average, which includes the Czech Republic's \$1,432, Poland's \$854, Bulgaria's \$516, and Romania's \$420)."¹³

These figures show the lack of budgetary resources available for the health care. The cost of such care, with the vaccines mentioned above costing about \$50, plus the cost of the doctor visit and other costs, shows the need for such funding.

Effective financial decentralization, meanwhile, has provided municipal bodies with more resources than before. Such decentralization focused on providing municipal government with more competencies tied to health care. Thus, further reform could tie increased competence for health care to increases in municipal bodies' funding. Government data note that for the 2018 period,

“revenues collected by and for local governments (revenues excluding inter-governmental transfers) amounted to around \$8.27 billion (or 234.1 billion UAH) ... or 21.5% more than in 2017. Since the beginning of financial decentralization, local budget revenues have been growing rapidly. If in 2014, they amounted to 68.6 billion UAH, in 2019 they amounted to 4 times more, or 267 billion UAH.”¹⁴

Kvitsins'ka provides additional evidence showing that municipal government now can afford additional spending on health care because:

- ❑ depending on the city, 15% to 45% of residents consider health care a priority for local authorities
- ❑ since 2017, local governments have gained greater financial autonomy from decentralization, particularly in health care. For instance, in 2014, before decentralization, local government revenues amounted to 68.6 billion UAH. In the first quarter of 2020 alone, these governments collected 104.9 billion UAH.¹⁵

Changes in legislation should sanction such additional spending. Two laws address public health spending – the Law on the Fundamentals of Ukrainian Health and the Law on Local Self-Government in Ukraine.

¹³ *National Strategy for Health Care Reform...*, *op. cit.*

¹⁴ *Finansova detsentralizatsiya: eksperty rozpovily pro rezul'taty 2018 roku ta perspektyvy 2019 roku*, <https://decentralization.gov.ua/news/10670>.

¹⁵ M. Kvitsins'ka, *Zdorov'ya ukrayintiv: chy usvidomlyuye mistseva vlada vidpovidal'nist'?*, <https://www.centrea.org/article/zdorovya-ukrayinciv-chi-usvidomlyuye-misceva-vlada-vidpovidalnist>.

Fundamentals of the Legislation of Ukraine on Health Care describes a health care reform focused on the supply and finance of public health care service (medical services). Public health care service (medical service) – a service provided to, and paid for by, patient or customer – by a health care institution or an individual registered and licensed entrepreneur. The “customer” may be the state, municipal bodies, legal entities and individuals, including the patient.¹⁶

Municipal bodies thus have the legal mandate to take an active part in the reform. However, so far, they have failed to do so. The government’s resolution on *Some Issues in the Implementation of the State Guarantees Program for Medical Care in 2020* does not mention municipal bodies. According to this program, in 2020 the national government must pay for the guaranteed package of medical care.¹⁷ Thus, as of 2020, citizens only can access the state guaranteed package of medical care (and not additional municipal services).

Both the health care reform and the decentralization reform thus have in common the goal of the municipal management of health care facilities.

The *Fundamentals* only mention municipal bodies twice. Once they do so, as described above. The second time in the provision stating that, “municipal bodies plan the development of health care facilities networks owned by the community, decide on the creation, termination, or reorganization of health care facilities independently, according to each hospital district’s development plan.”¹⁸ Since December, 20, 2019, when this provision appeared in Article 16, municipal bodies have made practically gains in this area.

According to the Law on Local Self-Government in Ukraine, municipal councils have the following competences in regard to healthcare. First, they manage municipal health care institutions and organize their logistical and financial support (Article 32).¹⁹ The Law lists municipal council’s competences in different areas but does not include a special article about their competences in the area of health care. Even the name of article 32 describes “competences in the fields of education, health care, culture, physical fitness and sports.” The explicit mention of health care (among these others) demonstrates legislators’ attitude toward municipal bodies participating in the health care arena.

¹⁶ *Osnovy zakonodavstva Ukrainy pro okhoronu zdorov'ya vid 19 lystopada 1992 r.*, <https://zakon.rada.gov.ua/laws/show/2801-12>.

¹⁷ *Pro zatverdzhennya Mis'koyi tsil'ovoyi prohramy «Zdorov'ya» na 2018–2020 roky: Rishennya Odes'koyi mis'koyi rady No. 2744-VII vid 14.12.2017 r.*, <https://omr.gov.ua/ru/acts/council/102256/>.

¹⁸ *Osnovy zakonodavstva Ukrainy pro okhoronu zdorov'ya vid 19 lystopada 1992 r.*, <https://zakon.rada.gov.ua/laws/show/2801-12>.

¹⁹ *Pro mistseve samovyryaduvannya v Ukraini: Zakon Ukrainy vid 21 travnya 1997 r.*, <https://zakon.rada.gov.ua/laws/show/280/97-БП>.

Currently, the government – through the National Health Insurance Fund – pays for medical services for its citizens with tax revenues. Local authorities no longer have to spend their own budgetary resources on this. As such, municipal authorities can use these funds to develop the local health care system, rather than simply pay for current expenditures. Such finance may include the development of a network of public health facilities (including paying for repairs, the purchase of equipment, the opening of new departments, and so forth). Such finance may also pay for providing additional medical services not included in the state-guaranteed package, and so on.

Some Ukrainian authors describe “the need to develop local authorities’ functions in the area of health, evolving from an integrated model of health care management and a customer-centered model, with the needs of the local community at that center.”²⁰ We agree. A legal instrument, such as those providing for the municipal health care comprehensive targeted programs, could put this idea into practice.

The Law on Local Self-Government in Ukraine allows executive bodies of villages, towns, and city councils (according to their competence) to “involve, on a contractual basis, enterprises, institutions and organizations, regardless of ownership, in the complex socio-economic development of villages, towns, cities – coordinating this work in the relevant territory” (Article 27, section 7). Researchers in this area explain that, “local self-government authorities, within their competence, can finance local programs developing and supporting municipal healthcare institutions, in upgrading equipment, effecting major repairs and reconstruction, increasing the pay of medical workers ([in self-described] ‘local stimulation’ programs), as well as finance local healthcare service delivery programs, local public healthcare programs, and other medical aid programs.”²¹

Some municipal councils have only one healthcare service delivery program, covering a 2–4-year period. Other municipal councils spend money the rest of the time occasionally, and only in case of serious need.

Kiev’s municipal council demonstrates the multi-year planning approach, adopting program *Health of Kyiv Citizens for 2020–2022*. The program aims to achieve the highest possible level of health for all of Kiev’s residents, regardless of age, gender, social status, and so forth. The program further aims to strengthen and protect the health of Kiev’s community members throughout their lives, reducing

²⁰ Y. Shvets, *Realizatsiya osoboyu konstytutsiynoho prava na okhoronu zdorovya: porivnyal'no-pravove doslidzhen-nya*, Thesis for obtaining a Candidate’s degree in legal sciences, Uzgorod 2019, p. 426.

²¹ L. Deshko, Y. Kostenko, I. Koval et al., *The Right to Health: Ukraine’s International Obligations and Financial Activity of Public Authorities in the Context of Reforming the National Health Care System*, “Georgian Medical News” 2020, No. 7–8, pp. 177–182; *National Strategy for Health Care Reform in Ukraine*, op. cit.

the prevalence of major diseases, injuries and disabilities.²² The program covers the development of a family doctor's institute, the legal autonomy of health care institutions, and more general issues – including the prevention of cardiovascular disease, financing pneumonia treatment, bronchial asthma, and several other diseases. The program also provides “target support” selected health care institutions, such as emergency dental care point Number 9 and the Kiev Bone Marrow Transplant Center.

Additionally, other city target programs support other areas of health care. Once more, in Kiev, such programs include *The City Target Program Against the AIDS Epidemic for 2017–2021* and *The City Target Program Fighting Tuberculosis for 2017–2021*, and the now expired *City Target Program of Medical Training for Kiev's Health Care Institutions for 2011–2018*.

Odessa's city program focuses on spending money as needed. *The City Target Program on Health for 2018–2020* aims to preserve and strengthen health care, reduce and prevent morbidity, disability and mortality for Odessa's residents; as well as improve the quality and efficiency of health care, ensure social justice, and protect citizens' right to health care. The program helps implement the *Caring Odessa* priority policy, as defined in the city's *Strategy for the City of Odessa's Economic and Social Development of the city of Odessa 2017–2022*.²³

The *On Health* program describes the priorities of the city's public health care reform. These priorities include financing the treatment of acute and chronic cardiovascular disease, coronary heart disease, in particular, myocardial infarction and angina, breast cancer and diabetes. For each group of patients, the policy plans to allocate additional money to cover check-ups and treatment, rather than develop municipal health care comprehensive targeted programs.

Additionally, in 2020, the city mayor allocated more than \$850,000 (or 24 million UAH) from the city budget to provide monthly incentive payments to medical workers treating COVID-19 treatment. Payments to physicians amounted to about US\$850,000 (or 65 million UAH hryvnias), with more than 8,300 payments made.²⁴

These two city target programs show that the local budget's money is frequently spent on paying for health care facilities' utilities and energy costs as well. Local

²² *Mis'ka tsil'ova kompleksna prohrama «Zdorov'ya kyyan» na 2020–2022 roky*, <https://health.kievcity.gov.ua/files/2020/1/20/rozporydgenny.PDF>.

²³ *Pro zatverdzhennya Mis'koyi tsil'ovoyi prohramy «Zdorov'ya», op. cit.*

²⁴ *COVID-19: ponad 24 mil'yony hryven' spryamovano z byudzhetu Odesy na munitsypal'ni doplaty medykam*, <https://omr.gov.ua/ua/news/221305>.

development programs usually cover investments in equipment, the reconstruction and digitization of health care facilities.²⁵

Some authors claim that the municipal bodies, “according to their competencies and financial capabilities, organize municipal services by taking full advantage of decentralization and government support for sectoral reforms, particularly in medical services.”²⁶ These two city target programs illustrate targeted support, with free medicines and medical services – without the reference to the ‘state guaranteed package of medical care’ described previously. Such a result clearly illustrates the lack of coordination between state and municipal bodies in making and implementing health care policy.

Municipal governments should take into account the state guaranteed package of medical care when planning municipal health care policy. *The Supplemental Program of Development, Support for Municipal Health Care Institutions and Providing Medical Services Topping Up the Services Provided by the State Guaranteed Package of Medical Care for Nikolaev for 2020–2022* provides an example of how municipalities might coordinate these two policy approaches.

This program consists of two components. The first part contains measures for providing financial support to municipal health care institutions – including their development, equipment, maintenance, repair, digitization, and support for utility costs, public service advertisements, and hepatitis B vaccinations for the health care, etc.).

The second part covers providing supplemental service (above and beyond) to the state guaranteed package of medical care. The Nikolaev Local Council has focused such support on reducing cardiovascular diseases, AIDS, tuberculosis, cancer, as well as the diabetes. Some other examples of support include hearing aids for children, the provision of stoma, diapers and other equipment for the disabled and children with disabilities. The program also covers milk formula and baby food and nutritional supplements for infants and toddlers from low-income families, as well as medicines for citizens with rare diseases, and other services.²⁷

²⁵ *Informatsiyna dovidka do pytannya pro problemy vrakhuvannya interesiv orhaniv mistsevoho samovryaduvannya v protsesi realizatsiyi medychnoyi reformy (formuvannya hospital'nykh okruhiv, nova model' finansuvannya medychnoyi dopomohy, avtonomizatsiya zakladiv okhorony zdorov'ya)*, https://www.auc.org.ua/sites/default/files/dovidka_prav1_zakonoproekty_reformaohzdor.

²⁶ V. Pal'chuk, *Rozvytok pervynnoho rivnya medytsyny v OTH*, http://www.nbuviap.gov.ua/index.php?option=com_content&view=article&id=4620:yak-prohodut-reforma&catid=8&Itemid=350.

²⁷ *Prohrama rozvytku, pidtrymky komunal'nykh zakladiv okhorony zdorov'ya ta nadannya medychnykh posluh, ponad obsyah peredbachenyi prohramoyu derzhavnykh harantiy medychnoho obsluhovuvannya naselemnaya mista Mykolayeva na 2020–2022 roky*, <https://mkrada.gov.ua/content/programi-z-ohoroni-zdorovya.html>.

Conclusions

The Ukrainian government is carrying out two important reforms – a health care reform and a decentralization reform that includes changes in municipal government. These two reforms have a huge potential for improving Ukraine’s health care system. Such potential remains largely untapped.

Decentralization has included the health sector reform. All municipal primary health care facilities have switched to the “money follows the patient” funding principle, receiving funds for the services they provide to their patients. Specialized health care institutions have been transformed into communal non-profit enterprises, no longer managed (and paid for) by the Ministry of Health, but by municipal bodies. These bodies now bear responsibility for determining the size, structure, location, and other details (like maintenance) revolving around their local health care networks. The national government only provides funding to primary and specialized health care institutions, paying for the ‘state guaranteed packages of medical care’ enshrined in law for such a long time.

As the local budgets have ballooned, thanks to decentralization, the government should introduce municipal packages of medical care in every city, town, and village. These supplementary services (topping up the state packages) could increase medical coverage, as in 2020 patients could only benefit from 26 packages, covering areas like emergency care, ambulance services, hysteroscopy, esophagogastroduodenoscopy, colonoscopy, cystoscopy, bronchoscopy, mammography, and outpatient dialysis treatment.

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