

PART 4

HEALTH CARE REFORM

QUARANTINE RESTRICTIONS IN HEALTHCARE IN UKRAINE DURING COVID-19

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Abstract. The new pandemic has arisen number of issues about legal regulations in the medical sphere, the right to health and the right to healthcare, other constitutional rights of people in Ukraine and in the world. In the article authors try to distinguish the most acute questions of hospitalization during pandemic, possible restrictions in that sphere, ways of legal regulations in Ukraine in that issue and their influence on human rights. The authors analyze means of legal regulations of the right to hospitalization and healthcare according to the Constitution of Ukraine, Ukrainian laws and bylaws. The analysis of the current legal acts on the quarantine status and provisions from the point of hospitalization is given. It is stated that only legal acts but not bylaws and only in special conditions can restrict or limit human rights in healthcare.

Key words: pandemic, medical sphere, restrictions, Ukraine, healthcare.

Medical law, as a legal support for the effective functioning of the medical field, in modern conditions is constantly facing new challenges that need to be addressed as soon as possible. It is not debatable that one of the most painful global problems

today is the fight against the pandemic of coronavirus disease COVID-19, which was declared on March 11, 2020 by the World Health Organization (WHO). This fact has not left our state aside, and thus the pandemic has forced us to make many changes to domestic regulations in human rights in the field of health care. However, it should be noted that this did not affect the Basic Law of our state in any way, so the Constitution of Ukraine has not undergone any changes. According to Article 49 of the Constitution of Ukraine, everyone has the right to health care, medical assistance and medical insurance, and according to Article 64 of the Constitution of Ukraine, constitutional rights and freedoms of man and citizen may not be restricted, except as provided by the Constitution of Ukraine; in conditions of martial law or state of emergency, certain restrictions on rights and freedoms may be established, indicating the term of these restrictions [1].

Because of this, many misunderstandings among the heads of medical institutions were caused by the issue of temporary suspension of planned hospitalizations of patients. In particular, we personally faced this problem – for example, the clinic of the Institute of Occupational Hygiene and Occupational Diseases of Kharkiv National Medical University, which is a structural unit of Kharkiv National Medical University, asked for legal clarification on these quarantine restrictions from staff of the Department of Forensic Medicine, Medical Law named after Honorary Professor M. S. Bokarius of KhNMU.

We started our analysis with the Resolution of the Cabinet of Ministers of Ukraine "On prevention of the spread in Ukraine of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2" from 11. 03. 2020 № 211 [2], in which for the first time when making changes dated March 16, 2020, the provision in item 4 was enshrined: the Ministry of Health of Ukraine shall provide a temporary suspension of planned hospitalization measures and planned operations, except for urgent ones. Also, the Ministry of Health of Ukraine issued Order № 698 from 23. 03. 2020 "On approval of Interim measures in health care facilities to ensure their readiness to provide medical care to patients with acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2", which enshrined the obligation of health care facilities to temporarily suspend the planned hospitalization of patients (currently invalid).

Resolution № 211 was amended by Resolution № 239 from March 25, 2020 and allegedly lifted restrictions on medical practice, but with a caveat provided that the

relevant personnel are provided with personal protective equipment, as well as compliance with appropriate sanitary and anti-epidemic measures. However, restrictions on planned medical care and planned hospitalizations were left in paragraph 8 of the same Resolution. Thus, amendments to the Resolution of 25. 03. 2020 on planned medical care and hospitalization, which still remained under restriction, not only did not solve, but even more confused this issue [3].

As of today, the Resolution of the Cabinet of Ministers of Ukraine "On quarantine and introduction of enhanced anti-epidemic measures in the territory with significant spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2" from 22. 07. 2020 № 641 (hereinafter – Resolution № 641) provides that until 31. 12. 2020 it is prohibited for health care institutions to carry out planned hospitalization measures, except:

- 1) provision of medical care due to the complicated course of pregnancy and childbirth;
- 2) providing medical care to pregnant women, parturients, new-borns;
- 3) provision of medical care in specialized departments of health care institutions to patients with oncological diseases;
- 4) providing palliative care in an inpatient setting;
- 5) provision of planned medical care to health care institutions of the national level that provide tertiary (highly specialized) medical care, subject to compliance with appropriate sanitary and anti-epidemic measures;
- 6) carrying out other urgent measures for hospitalization, if as a result of their transfer (postponement) there is a significant risk to human life or health [4].

Thus, from the literal interpretation of the legal norm, all other planned measures for hospitalization are subject to the ban, except for the established exceptions. But such wording raises a number of comments among scholars and practitioners in the field of medical law. In particular, Iryna Senyuta emphasizes that in this case, first of all, it is necessary to find out what is meant by the term "hospitalization" and to define the scope of this concept in order to understand how to properly apply the rule of the Government [5].

Resolution № 641 does not clarify the term “hospitalization”, so it is necessary to use other regulations to understand this term. The most successful definition, in our opinion, is "hospitalization is a referral to receive medical services in an inpatient setting, which is carried out, in particular on such grounds as: acute illness and / or

condition, trauma, burns, frostbite, poisoning, exacerbation of chronic disease, in need of surgical treatment or round-the-clock intensive treatment or observation "(paragraph 4, section II of the Procedure for referring patients to health care facilities and persons – entrepreneurs who in the manner prescribed by law have received a license to conduct business in medical practice and provide medical assistance of the appropriate type, approved by the Order of the Ministry of Health of Ukraine dated 28. 02. 2020 № 586) [6]. Thus, it can be concluded that the term "hospitalization" does not cover planned operations, in particular, because hospitalization is only a placement in a health care facility to provide the necessary amount of medical care.

It should also be noted that the Ministry of Health of Ukraine in its bylaws distinguishes between planned operations and planned hospitalizations:

a) in Temporary measures in health care facilities to ensure their readiness to provide medical care to patients with acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, approved by the Order of the Ministry of Health of Ukraine from 23. 03. 2020 № 698, which lost its force on 15. 05. 2020, contained the provision: "urgent and urgent scheduled hospitalizations and scheduled operations are not subject to termination in health care facilities";

b) in the Amendments to the Standards of medical care "Coronavirus disease (COVID-19)", approved by the Order of the Ministry of Health of Ukraine from 12. 05. 2020 № 1109, (currently the norm has been changed) provides the following provision: "Patients receiving medical care in connection with planned hospitalization measures or planned surgery, are tested for the coronavirus SARS-CoV-2 by PCR.

That is why Iryna Senyuta concludes that the given examples of normative wording unambiguously give grounds to assert that planned hospitalization measures and planned operations are different legal constructions in terms of content. It seems that the legislator "has in mind" planned operations as well, but in the norm lays down only the prohibition for health care institutions to carry out planned hospitalization activities. It is the imperfection of rule-making, vagueness and uncertainty that leads to misinterpretation, which is dangerous for human rights [5].

It should also be noted that according to paragraph 9 of Standard 2 "Primary medical and outpatient care for patients with suspected COVID-19", approved by the Order of the Ministry of Health of Ukraine from 28. 03. 2020 № 722, hospitalization

according to epidemiological criteria in health care institutions providing round-the-clock inpatient care are prohibited [7]. It is also important to emphasize that the additional restrictions that apply during the "weekend quarantine" period do not apply to the field of medical care.

Thus, it can be concluded that the quarantine restrictions also include the constitutional right to health care, medical assistance and medical insurance guaranteed in Art. 49 of the Constitution of Ukraine. In view of this, we should pay attention to Part 2 of Art. 64 of the Constitution of Ukraine, which guarantees that in conditions of martial law or state of emergency, certain restrictions on rights and freedoms may be established, indicating the term of these restrictions. Therefore, when interpreting other normative legal acts, one should start from the inviolable thesis that the restriction of constitutional law under Art. 49 of the Basic Law of Ukraine is permissible only in conditions of martial law or state of emergency. And, of course, it is worth remembering that only laws, not bylaws, determine the rights and freedoms of man and citizen, guarantees of these rights and freedoms (Article 92 of the Constitution of Ukraine).

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