

Guarantees to Exercise the Right to Health Protection and Medical Care in the Russian Federation and Opportunities for Cooperation within BRICS



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Abstract

The human right to health protection implies an overall constitutional duty of the state to assist the enforcement and ensuring of this right by means of medical care provision and other “positive” activities: protection and suppression of attempts to interfere and entrench on the right; control of healthcare by public authorities; significant interference into healthcare delivery. Reasoning from this fact guarantees of enforcement of the right to health protection in the Russian Federation can be divided into two main groups: 1) medical guarantees related to availability and work of medical organizations, and 2) state guarantees related to the creation of conditions under which human health and right to health protection will be ensured and protected to the maximum extent. Therefore, the real effect of guarantees of the right to health protection in Russia is far from ideal. The Russian law-makers try to approximate the domestic statutory acts to the international legal standards in this sphere. However, these actions are not efficient enough. The new incitement for the improvement of the situation in this area can be the extension of international cooperation within BRICS allowing to work out co-decisions about the problems of improvement of quality and availability of medical care; improvement of quality of medical education; increase of healthcare management control of the propriety of the delivery of the guaranteed scope of free medical care; liquidation of corrupt practices in the system of healthcare management.



Keywords

health care, guaranties, BRICS, quality of medical care, international cooperation

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Human life and health are supreme values in respect to which welfare and other values are determined.¹ According to the World Health Organization’s (WHO) Constitution, the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being, and it should be free from distinctions of race, religion, political belief, and eco-

¹ Mokhov, A.A. *Combination of Private and Public Interests in Legal Regulation of Medical Activities*. St. Petersburg: Publishing House “Legal Center Press”. 2003. 8.

nomic or social conditions.² As set out in Article 2 of Federal Act № 323-FZ, dated November 21 2011, “Fundamental Healthcare Principles in the Russian Federation”,³ health derives from an individual’s physical, psychological and social welfare, when a person doesn’t suffer from any disease and functional disorders of body organs and systems. The right to health protection is one of the most important citizen rights for people all over the world, and its enforcement carries special importance under social and economic reforms in Russia.⁴

The role of health in an individual’s welfare is outlined in item 2 of paragraph 2 in the Russian Federation Constitutional Court Opinion № 115-TO, dated June 6 2002,⁵ according to which human health is a supreme inalienable right, without which other values and welfare lose their significance. The Constitutional Court of the Russian Federation also described the pivotal role of health protection as an essential condition of life. Therefore, the fact that health is a value, which is protected by the Constitution, is incontestable. This is set out in Articles 2, 7 and 41 of the Constitution of the Russian Federation.⁶

The human right to health care implies an overall constitutional duty of the state to assist in the enforcement and ensuring of this right by providing medical care and other “positive” activities:⁷ the protection of the right to healthcare, the suppression of attempts to interfere with or impinge on the right, the control of healthcare by public authorities, and significant involvement in healthcare delivery.⁸ Taken from this perspective, guarantees underlying the enforcement of the right to health care in the Russian Federation can be divided into two main groups: 1) medical guarantees related to the availability and work of medical organizations, and 2) state guarantees related to the creation of conditions under which human health and right to health care is protected to the maximum extent.

The first group of guarantees comprises the compulsory and voluntary health insurance mechanisms. The most important among them are guarantees which deal with compulsory medical insurance that ascertains the provision of free medical care for citizens.⁹ The validity and efficiency of this insurance pattern have been tried and tested in developed European countries, such as Germany and France.¹⁰ Voluntary health insurance guarantees play a supplementary role to mandatory health insurance.

² WHO Constitution. WHO. Fundamental documents. Geneva. 1977. 5.

³ *Official Gazette of the RF* 48. 2011. Article 6724.

⁴ Fyodorova, M.Yu. *Medical Law: Study Guide for Higher Education Institutions*. Moscow: Hum.publ.centre VLADOS. 2003. 7.

⁵ Opinion of the Constitutional Court of the RF №115-TO, dated June 6, 2002. ”Refusal to accept the Yevgenia Zakharovna Martynova’s complaint of the violation of her constitutional rights under item 2 of Article 779 and item 2 of Article 782 of the Civil Code of the Russian Federation for consideration”. Bulletin of the Constitutional Court of the RF. 1. 2003.

⁶ Kovalevsky, M.A. *Values “Life” and “Health”: Constitutional and Legal Meaning and Elements of Legal Protection*. Kodeks-info. №1-2. 2003. 92.

⁷ See Avakyan, S.A. *Constitutional Law of Russia*: Textbook in 2 volumes. 4th edition. V. 1. Moscow. 2010. 773-775; Savostyanova, N.V. *Constitutional Right to Health Protection: Concept and Structure*. Constitutional and Municipal Law. 2005. №3.

⁸ Belov, S.A. *Right to Health Protection and Constitutional Values of a Legal and Social State*. Medicine and law. “Medicine and Law in the XXI century”, conference proceedings (Saint Petersburg, July 1, 2010). Saint-Petersburg. 2011. 29.

⁹ Federal Act №165-FZ, dated 16 July, 1999. “*Principles of Compulsory Social Insurance*”. Rossiyskaya Gazeta. 139, 21.07.1999.

¹⁰ See Lisitsin Y.P. *Public Health and Healthcare*: textbook. 2nd edition. Moscow: GEOTAR-Media. 2010. 117-119; Lentiev, O.V. *Legal Fundamentals of Medical Activities*. 2nd edition, revised and enlarged. St. Petersburg: SpetsLit. 2006. 94-100.

Let us consider compulsory medical insurance guarantees in detail. The guarantees, can be classified into:

1) guarantees provided within the Russian Federation (RF) Constitution. For example, Article 41 of the RF Constitution sets out the right to health care and free medical care in public and municipal healthcare institutions. This right is stated in item 2 of Article 7, item 2 of Article 21, item 1 of Article 42, item 3 of Article 55, point «zh» of item 1 of Article 72, item 2 of Article 74, item 2 of Article 92, point «c» of item 1 of Article 114, alongside a number of other articles in the RF Constitution.

2) guarantees stipulated by international laws and regulations, such as for example, the Universal Declaration of Human Rights, 1948,¹¹ the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950,¹² the International Covenant on Economic, Social and Cultural Rights,¹³ the European Agreement on Medical Care Provision sets out the guarantees to persons who are temporarily residing within a territory of another country 1980,¹⁴ the European Social Charter, 1996,¹⁵ the CIS Convention for Rights and Fundamental Freedoms, 1995,¹⁶ the 27 March 1997 Agreement among the Governments of the CIS Member States «Medical Care Delivery for Citizens of Member Countries of the CIS»,¹⁷ and others. For example, one of the provisions of the above-mentioned Agreement among the Governments of the CIS Member Countries guarantees unhindered, free emergency medical care for Russian Federation citizens residing within the territory of another CIS member country.

3) guarantees stipulated by special Federal Acts (for example, the provisions of Federal Act N323-FZ, dated November 21, 2011, «On Health Care Protection for the Population of the Russian Federation»,¹⁸ Federal Act, dated November 29, 2010, «Compulsory Health Insurance in the Russian Federation».¹⁹ Federal Act №4180-I, dated December 22, 1992, «Transplantation of Human Organs and (or) Tissues»,²⁰ Federal Act №3185-1, dated 2 July, 1992, «Psychiatric Care and Guarantees of Citizens' Rights during its Provision»,²¹ Federal Act №38-FZ, dated March 30, 1995, «Prevention of the Spread of Illness Caused by the Human Immunodeficiency Virus (HIV-infection) in the Russian Federation»,²² and others. For example, according to item 2 of Article 5 of Federal Act №3185-1, dated 2 July, 1992, «Psychiatric Care and Guarantees of Citizens' Rights during its Provision»,²³ persons suffering from psychiatric disorders have the right to respectful and moral treatment while receiving psychiatric care, without abasement of human dignity.

¹¹ *Rossiyskaya Gazeta*. 05.04.1995.

¹² «Bulletin of International Treaties». N 3. 2001.

¹³ «Bulletin of the Supreme Court of the RF». no 12. 1994.

¹⁴ USSR and Russian Federation International Treaty Series. Part XLVII. Moscow. 1994. 175-182.

¹⁵ «Bulletin of International Treaties». 2010. N 4. April. 17-67

¹⁶ *Rossiyskaya Gazeta* N 120. 23.06.1995.

¹⁷ *Rossiyskaya Gazeta*. N 90. 12.05.1997

¹⁸ «Legislation Bulletin of the Russian Federation». 28.11.2011 no 48. article 6724.

¹⁹ *Rossiyskaya Gazeta*. no 274. 03.12.2010.

²⁰ Gazette of the Congress of People's Deputies and the Supreme Court of the RF (CPD and SC). 1993. no 2.- article 62.

²¹ Gazette of CPD and SC of the RF. 1992. no 33. article 1913.

²² Legislation Bulletin of the Russian Federation. 1995. № 14. article 1212.

²³ Gazette of CPD and SC of the RF. 1992. № 33. article 1913.

4) guarantees provided by subordinate legislation. For example, Government Regulation №1074, dated October 22, 2012, approved the program of state guarantees for free medical care for 2013 and 2014.²⁴ According to item 2 of Article 35 of Federal Act, dated November 29, 2010, «Compulsory Health Insurance in the Russian Federation»,²⁵ this program defines the types of medical care, the range of insured events and the criteria outlining the availability and quality of medical care.

Guarantees in the sphere of medical insurance can be divided into *material*, i.e. referring to the more precise definition (content) of the guaranteed right, and *procedural*, providing conditions for the enforcement of the guaranteed right. An example of a material guarantee can be the territorial program for compulsory health insurance, approved by the regulatory legal act of the RF constituent entity. Article 81 of Federal Act №323-FZ, dated November 21, 2011, “Health Care for the Population of the Russian Federation”²⁶ contains the list of diseases (states) and the list of the types of medical care delivered to citizens free of charge. The provisions regulating the process of bringing legal action by health maintenance organizations in protection of interests of their insured persons are an example of a procedural guarantee (chapters 4, 12-16 of the Civil Procedure Code of the RF).

The second group of guarantees deals with the national protection of the right to health care and is executed, in the first instance, through the use of civil procedure of compensation for harm to health within tortious relationship (Articles 1084-1094 of the Civil Code of the RF). They are, for example, regulations connected with compensation for moral harm, medical expenses, rehabilitation, and compensation of earnings, lost due to injury. Secondly, the enforcement of this group of guarantees can also take place using the Criminal Code of the RF (Articles 109, 118, 120, 122, 124, 128, 235, 236, 248, and others) and the Code of Administrative Violations (Articles 6.2, 6.4, 6.8, 5.39, 17.9, and others). These provisions ensure the unhindered exercise of the right to health care in different areas of medical care by setting out criminal or civil responsibility against those who violate this right. For example, Article 124 of the Criminal Code of the RF stipulates criminal responsibility for the failure to deliver medical care and Article 6.3 of the Code of Administrative Violations of the RF stipulates administrative responsibility for the violation of laws in the area of sanitary and epidemiological welfare.

Thirdly, this group of guarantees contains standards which outline the mechanism of legal liability insurance of harm-doing. Such regulations allow for patient compensation in instances leading to negative consequences as a result of medical intervention to the fullest degree, exonerating the patient from providing the burden of proof in the form of a causal connection between the actions of a medical organization and the harm caused to this person's health. This mechanism is rarely used in the Russian Federation; however, it may be used in the future, as it is included in the draft bill «Compulsory Insurance of Patients during Medical Care Provision».

However, we should mention that both types of guarantees are not always adhered to or implemented. A lot of the state liabilities are difficult to implement and are sometimes undermined by the stronger entities of state legal relations in the area of healthcare, in particular by medical organizations and healthcare management bodies.

²⁴ Enactment of the RF of 22.10.2012 no 1074 “On the Program of State Guarantees for Free Medical Care for the Population in 2013 and for Planning Period of 2014 and 2015”. Legislation Bulletin of the RF. no 44. 2012. article 6021.

²⁵ *Rossiyskaya Gazeta*. no 274. 03.12.2010.

²⁶ “Legislation Bulletin of the Russian Federation”. 28.11.2011. №48. article 6724.

For example, the obligation to guarantee the right to access the premises and equipment of medical institutions on a non-discriminatory basis for vulnerable social groups (the poor, the homeless, the lonely) is difficult to enforce because many vulnerable people don't have ID documents. Medical services for vulnerable people are frequently required to be delivered immediately or as soon as possible due to their conditions (state of health), but lack of paperwork often prevents immediate action.²⁷

Today, there are also problems in the area of children's healthcare, deriving from improper medical care delivery, unsatisfactory sanitary and epidemiological conditions in preschool facilities and schools, and the lack of specialized medical transport necessary for house-calls to sick children.²⁸

An overview of some of the Russian regions revealed numerous instances, which are supposed to be covered by national health care policies, outlined in the Program of State Guarantees of Free Medical Care Delivery to the Population of the RF, but are, in fact, undertaken at a personal financial cost of citizens. For example, according to one study, 58.2% of Murmansk region patients bought medicines and bandages at their own expense and 46.5% paid in full for all examinations and treatments in an in-patient public hospital.²⁹ Similar problems exist in medical organizations dealing with reproduction, motherhood and childhood.³⁰ Corruption in healthcare national institutions prevents finding a solution to the problem.

The territorial equability of medical care delivery is also broken. Because of the remoteness and inaccessibility of some RF regions, medical care during more severe seasons can only be delivered using helicopters. Besides, to provide proper medical care it is necessary to provide additional rate of medical workers. This is linked to additional financing from the budget, and the state doesn't always undertake such financial risks. Hence, the delivery of medical care becomes the responsibility of medical assistants in the nearest rural health outposts, who generally work 8-hour shifts. This leads to a significant increase in working hours and has an adverse effect on the quality of medical care.³¹

Obligations to supply pharmaceutical products and medical equipment are also difficult to meet in some entities of the Russian Federation due to the short supply of pharmaceutical products in hospitals, different prices, misinformation provided by doctors regarding the type of drugs available for purchase, and the use of outdated equipment which should be discarded.³²

²⁷ Kryukova A.A. *Problems of Proxying Patients without ID in Medical and Preventive Treatment Facilities. Concept of Proxying. Russian Legislation Analysis.* Medical Law of Ukraine: legal regulation of healthcare (genesis, international standards, development and improvement trends): V All-Ukrainian (IV International) conference proceedings (May19-21, 2011, Odessa). edited by cand. of leg. sciences, docent I.Y. Seniuta, H.Y. Tereshko. Lvov: LOBF "Medicine and Law". 2011. 152.

²⁸ See Ushakova E.V. *Child and Medicine: Legal Issues. Guide for Parents and Doctors.* Moscow. M3-Press. 2004. 238-263; Akulina, T. I. *Legal Regulation of Pediatrics.* Pediatrics from XIX into XXI century: Conference Proceedings. St. Petersburg. 2005. 19.

²⁹ Yuriev V.K., Belinskaya V.G., Mirsky V.E., Naumova A.A. *Free Medical Care: Theory and Reality.* Problem of human being: humanitarian dimensions: collection of scientific papers. Part 2. St. Petersburg: Publishing house GPMA. 2003. 94.

³⁰ See Starchenko A.A., Furkalyuk M.Y., Rykova I.V. *Decision of the Public Council of Patient Right Protection of the Federal Service on Surveillance in Healthcare and Insurers on the Problem of Free Medical Care in Public and Municipal Healthcare Institutions.* Modern Medical and Preventive Treatment Institution Management: 2009-2010. edited by V.I. Starodubova. Moscow: PH "Health Manager". 2009. 93-105.

³¹ Kozhevnikov Yu. N. *Problems of Regulation of Labour Relations in Medicine.* "International, Russian and foreign labour and social security service legislation: the current state (comparative analysis)". VII International Conference proceedings. edited by K.N. Gusova. Moscow: Prospekt. 2011. 607-611.

³² See Akulina T.I. *Some Reasons and Legally Relevant Characteristics of Behavior of Health Professionals Working with Pharm. Distributors.* AiF. Health. Medicine survey. no 7. 2010. 14-15; Kadyrov, F.N. *Optimization*

The quality of medical care is continuously decreasing due to low qualification of medical workers, who receive their training in an imperfect and basic educational system. So, for example, when compared to medical care in developed countries like the Czech Republic, Austria, and Germany, the quality of medical care in Russia is much lower despite the fact that there are more doctors per capita. Over 60% of patients in Russia are not satisfied with the quality of medical care.³³

For the last 16 years, the rate of common illnesses in Russia has been on the increase due to, among other reasons, the inefficiency of the system of disease prevention and treatment. The increase in the prevalence of tuberculosis and sexually transmitted diseases indicates both social and economic problems in society, as well as the low efficiency of prevention programs.³⁴

In addition to the above-mentioned reasons, it is also necessary to pay attention to the development of medical sciences, the general worsening of the environment, and the development of new forms of diseases. These are other factors which may potentially affect the progressive implementation of guarantees. Therefore, the real effect of guarantees to the right to health care in Russia is far from ideal.

A comparative analysis of the domestic legal regulations and international legal standards in the area of healthcare suggests that Russian lawmakers are attempting to match domestic statutory acts to international legal standards.³⁵ However, these actions are not far-reaching enough. Certain difficulties arise in the implementation of these standards.

A new avenue for improving this situation can be the extension of international cooperation among BRICS, which would provide the opportunity to work out co-decisions about the improvement of quality and availability of medical care, the improvement of quality of medical education, the increase of healthcare management control, and the liquidation of corrupt practices in the system of healthcare management.

The above objectives can be achieved by arranging mutual official visits and expert consultations in the area of healthcare organization, through joint symposiums, the establishment of joint management bodies to work out international legal co-decisions in the area of healthcare,

of Use of Medicines and Consumables. Modern Medical and Preventive Treatment Institution Management: 2009-2010. edited by V.I. Starodubova. Moscow: PH "Health Manager". 2009. 379-392; Piven. D.V., P.E. Dudin, and M.V. Fedoseeva. *Organization of Medical Care of Multi-Purpose In-Patient Hospitals Amid the Crisis: Problems and Possible Solutions*. Modern Medical and Preventive Treatment Institution Management: 2009-2010. edited by V.I. Starodubova. Moscow: PH "Health Manager". 2009. 393-398; Vasilieva, E.V. and Y.S. Kudryavtsev. *Analysis of Medical Equipment Condition in Public Health Facilities Amid Economic Crisis*. *Modern Medical and Preventive Treatment Institution Management*: 2009-2010. edited by V.I. Starodubova. Moscow: PH "Health Manager". 2009. 399-408.

³³ See Ulumbekova, G.E. *Healthcare in Russia. What We Shall Do: Scientific Rationale of "Development Strategy of Healthcare of the RF to 2020"*. Moscow: GEOTAR-Media. 2010. 111-112; more than 31,000 of doctors and pharmacists graduated from educational institutions of the Ministry of Healthcare and Social Development of the Russian Federation in 2008. <http://www.lvrach.ru/news/5232118/> on October 5, 2011; Tatyana Golikova made a report at the enlarged session of the Collegium of the Ministry of Healthcare and Social Development of the RF. <http://www.minzdravsoc.ru/videoank/79/6> on March 20, 2009; New Medical History. <http://www.minzdravsoc.ru/health/high-tech/1>. October 5, 2011.

³⁴ Ulumbekova, G.E. *Healthcare in Russia. What We Shall Do: Scientific Rationale of "Development Strategy of Healthcare of the RF to 2020"*. Moscow: GEOTAR-Media. 2010. 24-45.

³⁵ Dyuzhnikov, S.A. *International Legal Standards in the Area of Human Health Protection and their Implementation in the Constitution of the RF*. Medical Law of Ukraine: legal regulation of healthcare (genesis, international standards, trends for development and improvement): V All-Ukrainian (IV International) conference proceedings (May19-21, 2011, Odessa). edited by I.Y. Seniuta and H.Y. Tereshko — Lvov: LOBF "Medicine and Law". 2011. 79.

and further meetings of Ministers of Health of BRICS countries to discuss relevant healthcare policies. Carrying out of the above-mentioned activities will also allow to strengthen cooperation in the area of healthcare among BRICS countries, which is one of the tasks outlined in the latest joint statement by BRICS countries in New Delhi in January 2013.³⁶



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³⁶ <http://pib.nic.in/newsite/erelease.aspx?reid=91533>. Access date 01.09.2013.

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