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**CONSTITUTIONAL OF THE HEALTHCARE MODEL IN RUSSIA  
AND THE USA**

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**Abstract**

Currently, there are various models of constitutional legal regulation of healthcare systems in the world. They are characterized by a different degree of involvement of the state and non-state institutions in the process of providing the necessary medical care to the population. There are three main models: (a) when the state prevails in this sector, (b) when medical services are provided mainly by non-state structures, (c) when the state and non-state institutions are represented in this sector in almost equal proportions. The authors focus on comparing two models of healthcare systems that have the maximum differences. This makes it possible to highlight positive and negative characteristics of diametrically opposite phenomena of public life and identify those aspects of constitutional legal regulation, which are better implemented. Therefore, in this paper much attention is paid not only to the analysis of the legal norms related to the constitutional regulation of the issue under consideration, but also to its practical aspect. This issue has become particularly topical during the COVID-19 pandemic. The study of the models of the private healthcare system in the USA and the mixed model of Russia also allows tracing the capabilities of each of them in developing the strategy of combatting the new virus and implementing guarantees of the basic human right recognized by the international community. The authors consider some problematic aspects of functioning of both models, analyse their features, try to find the roots of such problems and give recommendations for improving their constitutional and legal regulation.

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## **1. Introduction**

The duration of life and its quality depend on the state of health. That is why health is the primary concern of individuals. In its absence, all other benefits of life lose their significance. Health is influenced by many factors – the state of the environment, housing conditions, and food. An important role in the process of preserving and restoring health belongs to the healthcare organization of the state and also to guarantees of the right to health protection and medical care. These rights are directly related to the right to life.

The study of diametrically opposite models of healthcare in the USA and Russia allows identifying the strengths and weaknesses of each model. The paper pays attention to the constitutional and legal regulation of citizens' health protection in the sphere of medical care, which is the basis of healthcare systems and the practice of implementation of the right to life. This approach made it possible to trace the impact of healthcare models on the preservation of citizens' health.

This problem has become of particular importance during the COVID-19 pandemic. The model of healthcare has a great impact on the ability of the society to respond quickly to new threats to the country's population health. Thus, this topic is relevant not only for the present; it is also focused on the future.

## **2. Problem Statement**

Currently, in the Russian theory of constitutional law there are no studies analysing and comparing healthcare models of various countries. This state of things determines the topicality of the paper. At the same time, such an analysis is necessary to improve the constitutional and legal regulation of the Russian model of healthcare in order to ensure as much as possible the implementation of the right to health protection in the Russian Federation institutionalized in Article 41 of its Constitution.

## **3. Research Questions**

The problems discussed in the paper are as follows: (a) the differences between the Russian and American healthcare systems, (b) the possibility of borrowing experience from the sphere of constitutional and legal regulation of the USA healthcare system by Russia, (c) concerns connected with the constitutional and legal regulation of the healthcare systems in Russia and in the USA.

## **4. Purpose of the Study**

The purpose of this study involves the analysis of the constitutional and legal regulation of health care models in Russia and in the USA, identification of specific features of such regulation and positive experiences in this area, as well as developing proposals for improvement of problems under consideration.

## 5. Research Methods

The study comprises the following methods: dialectical, comparative, formal and logical, formal and legal.

The dialectical method allowed considering social relations that develop in the process of functioning of the healthcare models that exist in the two countries.

Formal and logical methods made it possible to identify the main categories of the topic.

The comparative, formal and legal methods helped us to analyse, compare the provisions of the legislation in Russia and the USA, and arrive at theoretical and practical conclusions.

## 6. Findings

### 6.1. Health is one of the most important values in an individual's life

Biologists, ecologists and physicians stress: health is not a person's fixed state, but is a product of his/her creative activity (Latyshevskaya et al., 2019). An effective healthcare system can also contribute to this state.

### 6.2. Healthcare system in Russia

The legal basis of healthcare organization in Russia is Article 41 of the Constitution of the Russian Federation, which assigns a primary role to health insurance. Article 72 of the Russian Constitution attributes coordination of healthcare issues to the joint jurisdiction of the federation and its constituent entities, since medical institutions can be owned both by the Russian Federation and its constituent entities, or be in private ownership. The federal level of the legal regulation of healthcare establishes the general principles of its organization, and the constituent entities of Russia have the right to adapt them to their national, economic, territorial and other factors.

The basic law in this area is the Federal Law of November 21, 2011 No 323-FL "On the Basics of Public Health Protection in the Russian Federation". It contains the definitions of the terms "health" and "medical care". Its disadvantage is the absence of the concept of "mental disorder", although the number of people suffering from it is steadily growing (Khizhnyak & Otstavnova, 2015). This aspect is most relevant in connection with the growth of risks of development of mental disorders during the pandemic (Bachilo, 2020).

According to Federal Law No. 326-FL of November 29, 2010 "On Compulsory Medical Insurance in the Russian Federation", Russia implements the basic "Program of Compulsory Medical Insurance". The law specifies the rights of the insured people throughout Russia, as well as territorial programs that clarify the rights of the insured citizens inhabiting the constituent entities of the Russian Federation.

According to this Law, employers make insurance payments for their employees. Article 8 refers to the powers of the state bodies of the Russian Federation constituent entities to pay insurance premiums for compulsory medical insurance of the unemployed citizens. This makes it possible to guarantee the entire population of Russia access to qualified medical care. According to the data of January 1, 2018, the number of persons insured under the Compulsory Medical Insurance (CMI) amounted to 146.3 million

people, including 66.4 million the employed ones and 79.9 million of non-working people (Federal Compulsory Health Insurance Fund, 2020).

Free medical care in the system of CMI is provided in the amounts established by the “Program of State Guarantees of Free Provision of Medical Care to Citizens” designed for the period of 3 years. According to it, the RF constituent entities have the right to develop their own programs. Such programs include lists of types, forms and conditions of medical care provided in state and municipal institutions at the expense of insurance premiums, indexes of diseases and syndromes, as well as categories of citizens to whom such care is provided.

An important role in the legal regulation of the health organization in Russia belongs to the procedures for treatment provided according to the categories and all types of medical care and specified by the Ministry of Health, which also approves the standards of medical care for various types of diseases.

Thus, the Russian legislation regulates in detail various aspects of medical care provided free of charge for citizens within the framework of CMI by state and municipal organizations.

At the same time, private medical practice has become widespread in the country. It is also subject to the provisions of the Constitution of Russia, the Federal Law “On the Basics of Health Protection of Citizens of the Russian Federation”, other laws, the order and standards of medical care. One should also mention the regulations developed by the Russian Government. The most important of them are the “Regulations on the Licensing of Medical Activities” No 291, 2012 “Rules for the Provision of Paid Medical Services for Medical Organizations” October 4, 2012 No 100, 2012. It should be also noted that people may pay for medical services and not for medical care, that is, in this case the latter may be provided partially and is often not the purpose of healing patients.

The Russian state remains dominant in the healthcare sector. Most of the issues of diagnosis and treatment of diseases, provision of medical services are regulated by the relevant legal acts. A significant part of the healthcare funding also belongs to the state. Russia has developed a budget and insurance model that enables all Russian citizens to receive the necessary medical care. There is an alternative to public insurance in the form of fee-paying medical services.

The President of the Russian Federation issued a Decree aimed at improving the healthcare system, on the basis of which the Government of the Russian Federation developed the Healthcare National Project, 2019. According to it, the state pays the major costs for medical services.

The existing budget and insurance model allowed Russia to provide citizens with access to the necessary medical care during the COVID-19 pandemic. In Russia, there is a free vaccination for citizens against this infection. Vaccination will surely help to reduce the morbidity and mortality rates of the population in the future.

### **6.3. Healthcare system in the United States of America**

The healthcare system in the USA, on the one hand, is characterized by high technology, a variety of tools and methods for the diagnosis and treatment of almost the entire spectrum of diseases known to medical science, and high incomes of all medical personnel. On the other hand, the accessibility to medical services for the population is rather low. According to statistics, about 27 million people in the

USA do not have health insurances (Bellus, 2017). This number also includes persons living in the US, who are not citizens of this state.

Regular insurance hardly covers some of the necessary medical services. Often it does not include the services of a dentist and a number of other specialists. Only rich people can afford insurance, which includes all kinds of medical aid. There are also other nuances.

The services of medical institutions are very expensive. The situation is complicated by the fact that medical organizations are not required to publicise their pricelists. They also may offer additional services that the patient cannot refuse, issue invoices for services provided charitably. Errors in invoicing, unreasonably increasing the costs, are also frequent.

Recently, there has been an increase in the popularity of alternative medicine. Even medical institutions offer customers such options (Wilkins, 2019). It is noteworthy that in the USA at the legislative level the Christian Church (regardless of its denomination) is also a healthcare provider (Legal Information Institute, 2020). Therefore, even the use of alternative methods of treatment requires health insurance.

In the USA, the constitutional and legal regulation of access to healthcare differs from that of Russia. First, the US Constitution does not provide the right to health care. Second, the basic law in this area is the Affordable Care Act (2010). The idea of its adoption arose in the early twentieth century. Almost every US President submits an updated version of this legal act to Congress. President Obama proposed its last version in 2010. It entered into legal force only in 2014 after the US Supreme Court confirmed the constitutionality of the majority of its provisions (de Vogue and Diamond, 2015). This means that some of the provisions cannot be applied in practice.

Currently, the US legislation in the field of constitutional and legal regulation of the healthcare system consists of several other laws in addition to the above-mentioned ones. For example: American Health Care Act (2017), Healthcare Quality Improvement Act (1986), Health Insurance Portability and Accountability Act (1996), Patient Safety and Quality Improvement Act (2005), Consolidated Omnibus Budget Reconciliation Act (1985) and so forth. These acts establish the possibility of insuring certain categories of citizens at the expense of the state, the transition from one job to another with the preservation of insurance, the obligation of owners of enterprises that employ more than two hundred employees to insure them at their own expense, the protection of medical personnel and their right to file lawsuits in case of unprofessional conduct of colleagues, confidentiality of statements about medical errors filed by both physicians and patients, medical insurance for children, including those from poor families, and veterans. For violating the confidentiality of patients, medical institutions may be fined.

The programs implemented by the US government play an important role in the implementation of all these laws: Medicare (MEDICARE: Health Insurance for the Aged and Disable, 1978) and Medicaid (Social Security Act, 1965), the Program to Reduce Readmission to Hospitals (Affordable Care Act, 2010). The essence of the latter is that hospitals, to which patients return within thirty days of discharge with the same diagnosis, are reduced in funding (Patient Safety and Quality Improvement Act, 2005).

The Medicaid program was expanded to a larger number of people, but this did not affect the prices. Doctors need to provide their services for more people quicker and not less efficiently. However,

their skills and equipment have not changed in one day. The increase in the volume of work entailed the need of raising salaries.

The problems of the American healthcare system have significantly worsened during the COVID-19 pandemic. Treatment for this disease is especially expensive in severe cases and for people who do not have insurances; recovery process becomes a direct path to bankruptcy. As a result, the death rate from the new coronavirus in the United States is one of the highest in the world.

All this happened despite the fact that the Medicare program was extended to help people infected with COVID-19. For those insured under this program, tests for coronavirus, vaccination, treatment with monoclonal antibodies, hospitalization, including quarantine, and telemedicine are free of charge. At the same time, part of the payments during treatment in hospitals is still incurred by the patients.

One of the problems is also shortage of medical staff, especially nurses. We agree with Balahur and Chen (2020) who stress: “Many countries address today the human capital crisis in the health system” (p. 435).

## 7. Conclusion

The analysis of the two healthcare systems allows concluding that the healthcare model in Russia is focused on individuals and on the implementation of the principle of the social state, proclaimed in Article 7 of the Constitution of Russia. Despite the considerable number of legal acts regulating all aspects of medical activity, the Constitution allows not only ensuring the realization of the citizens' right to health protection and medical care, but also counteracting the most important problems of public health.

The main problems of the constitutional regulation in the mentioned sphere in the USA are:

- lack of the constitutionally established right to health protection;
- lack of legislative consolidation of universal health insurance;
- divergence in the legal regulation of the health care system at the level of the federation and its subjects based on the lack of obligation of the states to bring their legislation in this area in accordance with federal laws;
- absence of the legal norms obliging medical organizations to publicize information about their prices, giving patients the right of undergoing certain kinds of medical examinations or refusing from them, or prohibiting prescription of tests that are not necessary for the diagnosis of certain diseases;
- lack of rules governing the right of healthcare institutions to choose between expensive and inexpensive methods of diagnosis and treatment.

The institutionalization of the right to health protection in the USA at the level of the Constitution is prevented by the fact that the state does not position itself as a social one. This situation relates to not only the right under consideration, but also to the right to rest and leisure, the right to education and some other socio-economic rights. The healthcare sector is a broad field for business, and its deeper state regulation will inevitably lead to a reduction in the income of private medical institutions, which prevail in the country. In fact, such legal regulation could disrupt the entire system of public relations in this country. Therefore, Americans can hardly expect any drastic changes in this area. Consequently, the

effectiveness of the healthcare system will remain the same and will not be ready for the future challenges.

Thus, Russia cannot follow the American healthcare system. At the same time, we can recommend borrowing some of the standards that have already proven themselves positively in the USA. For example, reduced funding or fines for hospitals, to which patients return within thirty days of discharge, and confidentiality of complaints filed by doctors or patients about unprofessional conduct of the medical staff.

## References

- Affordable Care Act*. (2010). <http://housedocs.house.gov/energycommerce/ppacacon.pdf>
- American Health Care Act*. (2017). <https://www.congress.gov/115/bills/hr1628/BILLS-115hr1628eh.pdf>
- Bachilo, E. V. (2020). Mental health of the population during the COVID-19 pandemic. *Journal of Neurology and Psychiatry named after S.S. Korsakov*, 120(10), 130–136. <https://doi.org/10.17116/jnevro2020120101130>
- Balahur, D., & Chen, O. (2020). Teaching the new generation of nursing students – difficulty or challenge? *EpSBS 8th International Conference*, 104, 443–449. [Hhttps://doi.org/10.15405/epsbs.2021.03.02.44](https://doi.org/10.15405/epsbs.2021.03.02.44)
- Bellus, J. (2017). “There will be deaths”: Atul Gawande on the GOP plan to replace Obamacare. <https://www.vox.com/policy-and-politics/2017/6/22/15857482/atul-gawande-gop-health-plan-bcra>
- Consolidated Omnibus Budget Reconciliation Act*. (1985). <https://www.ssa.gov/policy/docs/ssb/v49n8/v49n8p22.pdf>
- de Vogue, A., & Diamond, J. (2015). *Obamacare lives on after Supreme Court*. <https://edition.cnn.com>
- Federal Compulsory Health Insurance Fund*. (2020). Retrieved from: <http://www.ffoms.gov.ru/>
- Health Insurance Portability and Accountability Act*. (1996). <https://www.govinfo.gov/content/pkg/PLAW-104publ191/html/PLAW-104publ191.htm>
- Healthcare Quality Improvement Act*. (1986). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC299426/?page=1>
- Khizhnyak, V. S., & Otstavnova, E. A. (2015). International legal policy in the field of protection of the rights of persons with mental disorders and Russian legislation. *Journal of Neurology and Psychiatry named after S.S. Korsakov*, 115(5), 86–90.
- Latyshevskaya, N. I., Novikov, D. S., & Novikova, E. I. (2019). Health creation training of bachelors of education in information society. *EpSBS. International Conference “Education Environment for the Information Age”*, 496–503. [https://doi.org/10.15405/epsbs\(2357-1330\).2019.9.2](https://doi.org/10.15405/epsbs(2357-1330).2019.9.2)
- Legal Information Institute (2020). *Definition of health care provider*, 29 CFR § 825.125. <https://www.law.cornell.edu>
- MEDICARE: Health Insurance for the Aged and Disable* (1978). US Department of Health, Education and Welfare.
- National project “Healthcare”*. (2019). <http://government.ru/info/35561/>
- On approval of the Rules for the provision of Paid Medical Services by Medical Organizations*. (2012). Resolution of the Government of the Russian Federation of 04.10.2012, no 1006. [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_136209/](http://www.consultant.ru/document/cons_doc_LAW_136209/)
- On Compulsory Medical Insurance in the Russian Federation*. (2010). Federal Law of 29.11.2010, no. 326-FL. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_107289/](http://www.consultant.ru/document/cons_doc_LAW_107289/)
- On licensing of medical activities (with the exception of the specified activities carried out by medical organizations and other organizations that are part of the private Healthcare System on the territory of the Skolkovo Innovation Center) (together with the “Regulations on Licensing of medical activities (with the exception of the specified activities carried out by medical organizations and other organizations that are part of the private healthcare system, on the territory of the Skolkovo Innovation Center”)*. (2020). Decree of the Government of the Russian

Federation of 16.04.2012, no 291 (ed. of 28.11.2020).  
[http://www.consultant.ru/document/cons\\_doc\\_LAW\\_128742/](http://www.consultant.ru/document/cons_doc_LAW_128742/)  
*On the Basics of Public Health Protection in the Russian Federation.* (2011). Federal Law of 21.11.2011, no. 323-FL. [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_121895/](http://www.consultant.ru/document/cons_doc_LAW_121895/)  
*Patient Safety and Quality Improvement Act.* (2005). <https://www.govinfo.gov/content/pkg/PLAW-109publ41/pdf/PLAW-109publ41.pdf>  
*Social Security Act.* (1965). Retrieved from: <https://www.ssa.gov/policy/docs/ssb/v28n9/v28n9p3.pdf>  
Wilkins, T. (2019). Cryotherapy, cupping and TMS: New forms of alternative medicine treatment in St. George. *The Spectrum & Daily News.* <https://www.thespectrum.com/story/news>