

Қоғам & Дәуір



Қазақстан Республикасы
Президенті жанындағы
Қазақстанның стратегиялық
зерттеулер институты

2004 жылдан бастап
әр тоқсан сайын жарық көреді

Бас редактор
Алмас Арзықұлов,
ҚР Президенті жанындағы
ҚСЗИ-дің жетекші
ғылыми қызметкері

Редакция мекенжайы:
Қазақстан Республикасы,
010000, Астана қаласы,
Бейбітшілік көшесі, 4
ҚР Президенті жанындағы ҚСЗИ

Телефон (7172) 75-20-20
Факс (7172) 75-20-21
E-mail: office@kisi.kz
www.kisi.kz
www.journal-kogam.kisi.kz

Журнал Қазақстан Республикасының
Мәдениет, ақпарат және қоғамдық
келісім министрлігінде 2003 ж.
19 желтоқсанда тіркеліп, тіркеу туралы
№ 4526-Ж күәлік берілген.

ISSN 2414-5696 (print)
ISSN 2788-5860 (online)

doi.org/10.52536/2788-5860

Индекс 74007

Журнал саяси ғылымдар саласы бойынша
ғылыми еңбектің негізгі нәтижелерін
жариялау үшін Қазақстан Республикасы
Білім және ғылым министрлігі білім және
ғылым саласында сапаны қамтамасыз ету
комитеті ұсынатын ғылыми басылымдар
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ҒЫЛЫМИ-САРАПТАМАЛЫҚ ЖУРНАЛ

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LEGAL FRAMEWORKS IN HEALTHCARE: COMPARATIVE INSIGHTS FROM INTERNATIONAL JURISDICTIONS

Abstract. This article explores the extensive international regulatory frameworks governing the healthcare sector, with a primary focus on developed nations worldwide, encompassing the United States, France, Germany, and the United Kingdom. The authors offer insights into various national healthcare systems, contending that the regulatory paradigms within this industry are inextricably linked to the socio-economic policies specific to each country. Modern healthcare systems are deemed "advantageous" due to the emergence of mixed healthcare structures and diverse organizational forms, undergoing constant reform across the globe. The authors underscore the imperative need for effectively institutionalizing the healthcare sector. While acknowledging the inherent imperfections within the various healthcare organizational models mentioned, the article posits that a judiciously structured healthcare paradigm uniquely possesses the capacity to augment both the quality and accessibility of healthcare—a pivotal determinant for the amelioration of overall quality of life and citizen well-being.

Keywords: *Healthcare entitlement, health system dynamics, compulsory medical insurance, healthcare provisions, World Health Organization (WHO).*

Әділхан Мұхамедияров, Эльдар Бақпаев, Бағыш Габдулина,
Данагүл Копежанова

ДЕНСАУЛЫҚ САҚТАУДАҒЫ КҰҚЫҚТЫҚ НЕГІЗДЕР:
ХАЛЫҚАРАЛЫҚ ЗАҢНАМАЛАРҒА САЛЫСТЫРМАЛЫ ТАЛДАУ

Андатпа. Бұл мақалада Америка Құрама Штаттары, Франция, Германия және Біріккен Корольдік қамтитын дүние жүзіндегі дамыған елдерге басты назар аудара отырып, денсаулық сақтау саласын реттейтін

кең ауқымды халықаралық нормативтік базалар зерттеледі. Авторлар осы саладағы реттеу парадигмалары әр елге тән әлеуметтік-экономикалық саясатпен тығыз байланысты екенін алға тарта отырып, әртүрлі ұлттық денсаулық сақтау жүйелері туралы түсініктер ұсынады. Заманауи денсаулық сақтау жүйелері бүкіл әлемде тұрақты реформалардан өтіп жатқан аралас денсаулық сақтау құрылымдарының және әртүрлі ұйымдастырушылық нысандарының пайда болуына байланысты «артықшылықты» болып саналады. Авторлар денсаулық сақтау секторын тиімді институционализациялаудың маңызды қажеттілігін атап көрсетеді. Жоғарыда аталған денсаулық сақтауды ұйымдастырудың әртүрлі үлгілеріне тән кемшіліктерді мойындай отырып, мақалада ақылға қонымды құрылымдалған денсаулық сақтау парадигмасы, денсаулық сақтаудың сапасы мен қолжетімділігін арттыруға байланысты бірегей мүмкіндіктерге ие болатыны туралы айтылады.

Түйін сөздер: *Денсаулық сақтау құқығы, денсаулық сақтау жүйесінің динамикасы, міндетті медициналық сақтандыру, денсаулық сақтауды қамтамасыз ету, Дүниежүзілік денсаулық сақтау ұйымы (ДДҰ).*

Мухамедьяров Адильхан, Эльдар Бакпаев, Бағыш Габдулина,
Данагуль Копежанова

ПРАВОВАЯ БАЗА В ЗДРАВООХРАНЕНИИ: СРАВНИТЕЛЬНЫЙ АНАЛИЗ МЕЖДУНАРОДНЫХ ЮРИСДИКЦИЙ

Аннотация. В этой статье исследуется обширная международная нормативно-правовая база, регулирующая сектор здравоохранения, с особым упором на развитые страны мира, включая США, Францию, Германию и Великобританию. Авторы предлагают анализ различных национальных систем здравоохранения, утверждая, что парадигмы регулирования в этой отрасли неразрывно связаны с социально-экономической политикой, специфичной для каждой страны. Современные системы здравоохранения считаются «выгодными» из-за появления смешанных структур здравоохранения и разнообразных организационных форм, претерпевающих постоянные реформы по всему миру. Авторы подчеркивают настоятельную необходимость эффективной институционализации сектора здравоохранения. Признавая присущие несовершенства различных упомянутых организационных моделей здравоохранения, в статье утверждается, что разумно структурированная парадигма здравоохранения обладает уникальной способностью повышать как качество, так и доступность медицинской помощи, что является ключевым фактором, определяющим улучшение общего качества жизни и благосостояния граждан.

Ключевые слова: *Право на медицинскую помощь, динамика системы здравоохранения, обязательное медицинское страхование, обеспечение здравоохранения, Всемирная организация здравоохранения (ВОЗ).*

Introduction

In our fast-paced modern era, the global community is turning its attention to healthcare with a newfound awareness among nations of the vital role human rights play in this arena—rights that are both interconnected and indivisible. Some of these essential human rights hold a key role in shaping our systems, and one that stands out is the right to health. The constitution of the World Health Organization (WHO), expressly declares: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." [1].

Currently, there are numerous healthcare systems, subject to regulation within the framework of the socio-economic policies of individual nations. The primary objective of state healthcare policy is, above all, to increase the life expectancy of the population, as well as to enhance the quality and accessibility of medical care, promote positive trends in health, reduce morbidity rates, and advocate for a healthy lifestyle. To achieve this goal, consistent measures of political, economic, and social nature are necessary, founded upon legal frameworks governing the healthcare sector.

It's worth noting that healthcare systems can generally be categorized based on three criteria: the way medical services are provided, sources of financing, and the regulatory framework. Healthcare systems, discerned through these criteria (such as the public healthcare system or private insurance systems) represent theoretical models that existing systems typically don't fully adhere to. However, in specific healthcare systems, corresponding characteristics tend to dominate. In accordance with the contention put forth by R. Piot, modern healthcare systems are posited as "advantageous," given the development of mixed healthcare systems and various organizational forms in many countries worldwide [2]. This, in our view, is a valid statement, as each country globally maintains a public healthcare sector complemented by other forms of medical care provision.

Problem Statement and Research Objectives

Health is a fundamental life need for everyone, a universal value that holds special significance. Consequently, healthcare assumes a pivotal position as a top-priority sector in any country's development. The primary objectives within this domain revolve around the preservation and enhancement of citizens' health, with the acknowledgment that health holds a distinctive and integral role in societal well-being. Undoubtedly, effective organization and legal regulation in the healthcare sector are essential. Only a thoughtfully structured healthcare model has the potential for advancing the quality and accessibility of healthcare services, thereby substantiating an eventual enhancement in the overall quality of life for the population.

Acknowledging that the human right to health is firmly embedded in foundational international treaties lends an unparalleled significance to this right within the policy frameworks of nations. This priority is internationally codified, compelling states to take requisite measures in ensuring, to the maximum extent possible, the right to health for every individual. Consequently, the conscientious commitment to the well-being of citizens is underscored as a governmental

duty, rather than a discretionary prerogative to take action in healthcare policies. Specifically, the Tallinn Charter of the World Health Organization (WHO) delineates that “Within the political and institutional framework of each country, a health system is the ensemble of all public and private organizations, institutions and resources mandated to improve, maintain or restore health. Health systems encompass both personal and population services, as well as activities to influence the policies and actions of other sectors to address the social, environmental and economic determinants of health.” [3].

Despite researchers' attention to the issue of regulating healthcare systems in developed countries worldwide, several questions related to effective domestic legal mechanisms remain inadequately explored. For instance, ongoing work is needed to investigate the protection of patient rights or the integration of patient rights into various sector-specific laws, codes of professional ethics for physicians, and so forth.

This article analyzes the extensive and above all successful experience in regulating the healthcare sector, a significant domain within the ambit of social activity in developed countries worldwide. The assessment of its effectiveness is paramount, as it may serve as a foundational basis for the analysis and evaluation of national policies in this particular field.

Literature Review

Issues related to public health policy are widely debated among researchers. Experts believe that coordinated action to achieve population health is necessary to maintain a strong economy, preserve social stability and ensure national and global security. All this can only be facilitated by the effective functioning of the health care system and the provision of medical services. According to M. Grossman, the healthcare sector constitutes a pivotal resource for the nation's overall well-being [4].

Experts conducted a thorough analysis of the socially legislated health insurance system model [5], with a specific focus on its German healthcare system [6]. It's also worth noting that healthcare systems in various countries undergo constant reforms, integrating elements from different models.

The quality of health care is influenced by a variety of factors, including socio-economic, political, historical-cultural and other aspects specific to a particular country. This is in line with M. Salli's assertion that human rights, including the right to health, form an integral part of the local cultural system that promotes "contribution to social progress and the improvement of living standards" [7].

The libertarian-legal concept of human rights, as articulated by V. Nersesyants [8], also deserves attention. While supporting the idea that states should refrain from intervening in the health of individuals, proponents of this concept argue that the state has an obligation to ensure the health of individuals. From their perspective, the realization of human rights, encompassing the right to health, depends on the availability of material resources within states [9]. From our perspective, their assertions bear credence, as evidenced by the healthcare policies of developed nations worldwide.

Research Methodology

In this article, the authors used scientific methods of analysis and synthesis, systemic and historical methods and, mainly, the method of comparative analysis conducted on the basis of resources for this research. The aforementioned methods were used to conduct a comprehensive study of the health care systems established by the world's leading countries, as well as the national policies of several nations aimed at legal regulation in the field of health care.

The conceptual-theoretical basis of the study includes a number of interdisciplinary methodological approaches associated with health management research, in particular the libertarian-legal conceptual framework.

Discussion

Certainly, every nation crafts and refines its distinct health enhancement program, taking into consideration a complex interplay of political, socio-economic factors, and the available resources.

The UK, in particular, has a predominantly public health service. As a result of health reform, a national health service has been established to provide free medical care to the whole population. The health services provided by health centers are mainly funded from the national budget. In general, if we take the data for 2020, the UK has allocated more than 12% of GDP to health care [10]. It should be noted that decentralization is a fundamental characteristic of the UK healthcare system: England, Northern Ireland, Scotland and Wales have their own public healthcare systems. They are funded and accountable to their respective governments and parliaments.

Lack of funding for modern equipment, state-of-the-art medical facilities with modern technology, waiting lists for hospitalization, and the gap between primary care, general practice, hospitals and community health services are often cited as shortcomings of the public healthcare system [11].

It is worth mentioning that in several other countries like Canada, Singapore, Australia, Norway, and others, the healthcare system is universal and funded by the state budget.

In Germany, Austria, Belgium, the Netherlands, Israel, Switzerland, and many Eastern European countries, the predominant model, known as the Bismarck model, relies on the financial involvement of employers who make mandatory contributions to health insurance funds.

Germany has a historical legacy in the development of insurance-based healthcare since 1883. In comparison to other nations, the German healthcare system is formally classified as a social health insurance system. The primary objective of the German healthcare system is the preservation and restoration of health. To achieve this goal, it encompasses a differentiated system of medical professional groups and institutions that encompasses full outpatient, partially inpatient, and fully inpatient sectors.

The health security system in Germany comprises several components:

- Mandatory health insurance, serving as a pivotal financial instrument within the healthcare system. It assumes a central role in ensuring security and effective management in the allocation of financial resources, materials, services,

and medical infrastructure.

- Private health insurance, with various private insurance companies offering plans featuring different coverage levels.
- Nursing care insurance, designed to subsidize both outpatient and inpatient treatment.
- Other mandatory social insurance, including pension insurance.
- Care and social security services, encompassing medical and material care for victims of war and violence in accordance with the Crime Victims' Compensation Act
- Public health service, engaged in the implementation of general preventive measures such as school (dental) examinations, routine vaccinations, and similar initiatives.

Since 2009, health insurance has been mandatory for the entire population, constituting a crucial element of the German healthcare system. It serves to protect millions of insured individuals and their dependents from the diverse risks associated with illnesses. According to the Association of Substitute Health Insurance Funds, as of 2020, mandatory health insurance covers approximately 73.36 million people, representing approximately 90% of Germany's permanent population. The provision of mandatory health insurance is overseen by 105 compulsory health insurance companies (as of 2021) [12].

It is a mandatory requirement for all residents in Germany to have health insurance coverage. To comply with these mandatory requirements, residents can obtain health insurance from both public health insurance companies and private health insurance companies by choosing mandatory or voluntary insurance. The predominant choice, selected by about three-quarters of those who have the option to choose between the social and private healthcare systems, prefer the social insurance framework, wherein coverage for dependents is provided at no cost.

Nationwide coordination is handled by the Federal Ministry of Health. In German states, referred to as "Länder", there are corresponding ministries, including their bodies, and institutions. Municipal entities operate under the jurisdiction of local authorities, including councils and committees. It's worth noting that the medical administration does not exert jurisdiction over insurance funds and their associations. In addition to unions, medical associations, and the insurance fund associations themselves, the Ministry of Labor, Science, Health, and others are involved in overseeing the activities of insurance organizations [13].

According to researchers, the German healthcare system remains relatively expensive. In 2020, Germany spent 11.7% of its gross domestic product on healthcare [14]. Per capita spending in 2022 was \$8,010 [15]. In comparison, while per capita healthcare costs are lower overall, most health indicators in the United Kingdom outperform those in Germany. Researchers attribute this to more efficient healthcare fund allocation in the United Kingdom [16].

In general, an examination of the evolution of the German healthcare system indicates that a fundamental transformation in the sector has become imperative in recent decades. The principal aim of the reform in the national healthcare system is to increase the efficiency of resource utilization [17].

In our view, the German experience shows that health care in European

countries is still subject to a conflict between market competition and state regulation. Meanwhile, Article 153 of the Lisbon Treaty entrusts the European Union Member States with the task of "improvement in particular of the working environment to protect workers' health and safety" and "social security and social protection of workers" [18].

However, it is worth noting that in European countries, certain healthcare systems incorporate elements from diverse models. For instance, in Germany, a federal tax subsidy has been integrated into mandatory health insurance as a component of the national healthcare system. This phenomenon is academically recognized as the "hybridization" of healthcare systems [19].

In recent decades, there has been a discernible global increase in the prominence of the market-oriented healthcare model, often exemplified by the system prevalent in the United States. However, at first glance, the U.S. appears to lack a unified healthcare system, as various healthcare models coexist in the country. Nevertheless, in our view, it can be asserted that a market-based model predominates in the United States. To explain, many people in the U.S. have voluntary private health insurance, covering about three-quarters of the population. It's also worth noting that more than a third of all medical services are paid for through this kind of voluntary insurance [20].

A portion of the expenditures is derived from allocations in the federal budget and public programs, predominantly directed towards "Medicare" (providing medical assistance to individuals aged 65 and older) and "Medicaid" (delivering medical aid to the economically disadvantaged and unemployed). The remaining funds comprise personal payments from citizens and contributions from various religious and charitable entities. In aggregate, healthcare expenditures in the United States constituted 18.3% of the gross domestic product in 2021, as reported by the Centers for Medicare and Medicaid Services (CMS) [21].

In 2022, the United States expended \$12,555 per capita on healthcare, as per the assessments by the Peterson Foundation. This figure represents the highest healthcare expenditure per person among OECD countries [22].

However, it's crucial to mention that these figures differ based on the state. For example, in 2019, total health spending per person was twice as much in Washington, DC, as in Utah. As noted by American researchers Emily K. Johnson and Joseph L. Dieleman, these variations across states can be explained by the underlying demographic and economic characteristics, as well as health administration and funding mechanisms unique to each state [23].

There are more than 2000 health insurance companies in the country [20, p. 209]. In the United States, free healthcare services are available only to certain categories of the military personnel. Additionally, subsidized healthcare, funded through public, federal, or other sources, is provided to specific segments of the population (such as war veterans, Native Americans, State Department employees, merchant mariners, and individuals covered by the "Medicare" and "Medicaid" laws).

The cost and quality of the U.S. healthcare system are major concerns for American citizens. Discussions about the effectiveness of the healthcare system and the excessive administrative expenses in the industry are common in this

country [24].

We're also keen on understanding France's approach to healthcare organization and legal regulation. Healthcare expenditures in this country, the second most populous in the EU after Germany (with a population of 67 million), account for approximately 12% of the GDP. Per capita medical expenses in 2022 amounted to \$6,516 [25]. Traditionally, France consistently ranks among the top five countries in the World Health Organization, which comprises 194 member states.

The French healthcare system, from our perspective, embodies a hybrid model characterized by strong state intervention. However, structurally, it is based on the Bismark approach prioritizing objectives of universality and solidarity. The insurance system in France covers nearly 100% of the population, including undocumented migrants under specific conditions.

The direction of healthcare policy and the regulatory oversight of the healthcare system are distributed among governmental entities, encompassing the parliament, government, and Ministry of Health, as well as regional and local authorities. It is of significance to highlight that parliamentary control over the healthcare system is exercised through the Social Security Financing Law that establishes total amount of health spending for the forthcoming calendar year [26].

Since 1996, this process has been enshrined in the Constitution, which positions Parliament as the main actor in the management of the health sector. This confirms the state's influence on the level of social security spending. It also shapes health policy priorities through the enactment of public health legislation.

The quality of medical care is regulated at the national level. At the regional level the Administration of Health and Social Affairs is represented by the Regional Health Agencies (Agences régionale de santé, ARS), which are not directly under the supervision of the Ministry of Health, but fall under the administrative supervision.

These regional health agencies have responsibility for ensuring that healthcare provision meets the needs of the population [27].

These agencies are responsible for distributing benefits from regional budgets to various medical institutions. Public hospitals receive annual budget subsidies from the ARS. Services provided by private hospitals are paid for on the basis of a "per service" reimbursement system.

The hospital system demonstrated flexibility during the Covid-19 pandemic, with a rapid increase of intensive care capacity and public-private partnerships [27].

In summary, it can be said that the organization of health care and health insurance in France is quite complex.

The reforms adopted to improve cost management have emphasized the need to share responsibility between the two main actors in the organization and regulation of health care, the state and the health insurance system. Future reforms in France are primarily focused on promoting greater coverage and equitable access to care and prevention, as well as continuing reforms of primary care and provider payment [27].

It is worth noting that unofficial payments (backdoor payments) are rare in France and that health care providers who engage in such practices are subject

to disciplinary sanctions. According to the Eurobarometer survey on corruption, 5% of patients in France apart from official payment had to give an extra payment or a valuable gift to a nurse or a doctor, or make a donation to the hospital for services in 2019, which is close to the EU average (5%) [28].

Similar to numerous health systems across Europe, the Covid-19 pandemic laid bare certain flaws in the French healthcare system while also presenting chances to enhance its ability to withstand challenges.

In summary, public healthcare systems are marked by health care institutions funded through taxation and overseen by public entities. Health insurance systems typically feature a blend of economic support structures, with financing coming from premiums tied to general wages and a significant role for self-governance in regulation. In private insurance systems, pension funds are typically privately owned. Private funding for health services, whether through direct payments or private insurance, holds particular significance, with the market playing a pivotal role in regulating the healthcare system.

This study, based on examples from developed countries globally, indicates that the effectiveness of a healthcare system in the modern world is more dependent on efficient administration and technology than the sheer amount of financial resources invested.

Conclusion

An analysis of healthcare trends in leading countries reveals the absence of a universal model for healthcare systems. Generally, the prevalent approach for organizing and financing healthcare appears to be the health insurance system. Nevertheless, it is important to note that the typology of health insurance systems is notably intricate.

- The "Substitute" system, seen in countries like Germany, allows citizens to choose between public and private health insurance.
- The "Duplicating" system, as observed in the British insurance system, involves the simultaneous development of compulsory public and private health insurance, providing citizens the option to use both concurrently.
- The "Complementary" system is utilized when the state insurance cannot fully cover all population groups or when the state does not entirely cover the cost of treatment, as commonly seen in France.
- In contrast, there is a system where healthcare is predominantly financed by the private sector, as seen in the United States.

Each insurance system has its drawbacks. In Germany, under the "substitute" system, 10% of affluent residents choose private insurance and essentially make no contribution to the state healthcare system. This undermines the principle of insurance solidarity.

In summary, health care systems worldwide vary in their organization. Some are centralized, while others follow a decentralized approach. Financing methods also differ, with some relying on insurance principles and others on budget financing. Coverage varies as well, with some systems encompassing all citizens and others not. Each country's healthcare system is uniquely shaped by its historical and economic development, national mentality, and the specific

conditions influencing the formation of legal consciousness within society.

It is crucial to underscore the significance of legal regulation in the healthcare system, regardless of its underlying model. In many developed countries like the USA, France, and Germany, national legislation encompasses not only healthcare laws but also medical or doctors' codes. These codes govern relationships among medical professionals, patients, their relatives, and the professional interactions among medical practitioners. They also regulate dealings with the administration of medical institutions and state authorities. Several countries are actively working towards enacting separate laws to safeguard patients' rights or incorporating patients' rights within various sectoral laws. In essence, the legal regulation of healthcare stands as a foundational task for governments.

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Мақаланың редакцияға түскен күні: 23-01-2024

Мақаланың жарияланған күні: 27-06-2024