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CONTRACT OF MEDICAL INSURANCE IN UKRAINE: LEGAL DESCRIPTION

Introduction

In modern society the probability of the occurrence of unforeseen situations that threaten the health and life of the persons increases daily. Due to this fact each person tends to protect him or herself from any possible dangers and risks that may occur. Among the means of protection the insurance protection which is offered by the insurance companies is a dominant one. Attending insurance agency, the insurer enters the contract of medical insurance, which appears to be a legal document that mediates the process of providing of insurance services by the insurer to the insured. Medical insurance is a form of social defence of the person against all the risks related to the loss of health. The essence of medical insurance is to provide an insurance settlement to those citizens who received some medical care and other expenses related to the maintenance of health.

Medical insurance is a system of relations of the protection of property and non-property interests of individuals in the health care sector. Ukrainian legislation does not contain a special legal act regulating this certain area of relations, that is why in practice they are regulated by general norms of the contractual law, contained in the Civil Code of Ukraine and other acts of civil legislation. However sometimes the specificity of these relations is ignored by general rules.

In this regard the legal characteristics of the contract of medical insurance is to be presented in this paper.

Main features of the contract of medical insurance

According to the Article 979 of the Civil Code of Ukraine the insurance contract is a contract under which one party (the insurer) is obligated in the case of the occurrence of a specific event (insured accident) to pay to the other party (the insured) or another person named in the contract, a certain amount of money (insurance settlement), and the insurer is obligated to pay amount insured and perform other actions under the contract¹. The Law of Ukraine "On Insurance" (Article 16), in addition, focuses on the a mandatory written form of the contract, and also on the possibility of laying upon the insurer the obligation not only to make the insurance payment, but also to provide a certain assistance, perform certain services etc.².

The main features of a contract of medical insurance:

1) The Autonomy of the contract of medical insurance. It can exist along with the other types of civil contracts. For example, a contract of insurance upon lives of a debtor provides the possibility of a full loan satisfaction under the loan contract or regular payments in case of the insured events happen. In this case, the creditor plays double part in the relations turning into a insurer as well as remaining to be a creditor at the same time. It should be noted that those two roles are different by nature as they are drawn from different relations.

2) Aleatory nature of the contract. Insurance relations emerge and exist only if the insurer possesses a certain insurance interest. It could be some possible losses that he may incur as a result of the occurrence of a certain insured event. The insurer does not know whether he will have to fulfill his obligations to pay the amount insured or not; there is also an uncertainty regarding the time of the insured event, the sum of the amount insured etc. At the same time, the insured cannot know whether it will be him or a beneficiary who will eventually get

¹ Civil Code of Ukraine. Retrieved June 15, 2016 from: <http://zakon3.rada.gov.ua/laws/show/435-15>.

² Law of Ukraine "About insurance". Retrieved June 15, 2016 from: <http://zakon5.rada.gov.ua/laws/show/85/96-%D0%B2%D1%80>.

the amount insured. In other words the obligation has the mutual aleatory nature, as the insured is obligated to pay the insurance fee even if an insurance event does not occur. The insurer, in his turn, is obligated to make an insurance settlement, even if its sum is much higher than the sums received from the insured³.

3) The contract of medical insurance does not belong to the contracts containing some suspensive condition which provoke some legal consequences (conditional contracts). The insured event is defined as an essential term of the insurance contract and not an additional one. The rights and obligations under the contract of medical insurance arise immediately after setting the contract, but the subject of a specific obligation ie the action required from the obliged person depends on the occurrence of certain circumstances (events). When the insurance event occurs, the insurer does not achieve any new obligations connected with the insurance settlement under the contract as the obligation to make an insurance settlement was laid upon him right after signing the contract. If the insurance event occurs the insurer is only obliged to fulfill the duty, which was originally taken upon him by signing the contract⁴.

4) Bilateralness of the contract. It means that the parties have mutual, defined by a contract, rights and obligations. However, the peculiarity of such a contract is that the obligations of one party under the contract comes up much later then the obligations of the other party. Unlike the obligation of the insured, the insurer's obligation to pay the amount insured comes up later or may not come up at all. This peculiarity is defined by the existence of certain insurance risks.

5) A random nature of the insured event that may occur objectively and unexpectedly (death, illness, accident). Its accidental nature equalizes the positions of insurer and insured at the conclusion of a contract of medical insurance because such events may occur or not occur.

6) Paid contract. The paid character of the contract is represented by the insurance payments (insurance premium, insurance bonus) of

³ T.V. Bodnar, O.V. Dzera, N.S. Kuznietsova and others, *Contractual law of Ukraine. Special part.*, Kyiv 2009, p. 753.

⁴ *Ibidem*, p. 755.

the insured and by the insurance settlement of the insurer, when the insured event occurs⁵.

7) The contract of medical insurance is concluded and generates legal consequences as a legal fact, from the moment of committing of certain actions by its parties. According to the Article 983 of the Civil Code of Ukraine and Article 18 of the Law of Ukraine "On Insurance" the insurance contract is considered concluded from the moment of making the first insurance payment, unless other is provided by the contract of insurance⁶. So, as a rule, the first insurance payment is a law setting fact, which provokes the appearance of the civil relationships under the contract.

In practice the contract of medical insurance comes into force at 00:00 the day, following the day of the receipt of the insurance payments on the insurer's account.

8) Public nature of the contract of medical insurance. The conditions of the public contracts are set to be the same for everyone. The insurer designs and approves the rules of insurance and insurance tariffs that are obligatory for him. Publicity of the contract of medical insurance is brightly represented when the insurer comes out with the public offer to conduct the contract by publishing terms of insurance.

Insurance companies usually deny public character of the insurance contracts. They motivate their position by the article 633 of the Civil Code of Ukraine which defines the possibility of a consumer in case of the groundless refusal of the entrepreneur from the conclusion of the public contract to claim damages, inflicted to the consumer by such refusal. According to it, the recognition of such a contract to be a public one will violate such principles of civil law as a freedom of contract and free will of the parties.

The fact that the contracts of insurance belong to those contracts which are offered by one party to another only to accept its previously settled terms caused stormy discussions among scientists. Supporters of such a position stated that Article 16 of the Law of Ukraine "On insurance", declares that the contracts of insurance are to be concluded in accordance with the rules of insurance. The rules of insur-

⁵ Law of Ukraine "About insurance". Retrieved June 15, 2016 from: <http://zakon5.rada.gov.ua/laws/show/85/96-%D0%B2%D1%80>.

⁶ Ibidem.

ance are produced by an insurer on his own. In practice insured cannot substantially influence on forming the terms of the contract, he can only choose the variant of behavior, offered by an insurer in the Rules of insurance.

The opponents of such a position state that the insurer can only set general terms of the insurance contract according to the rules of insurance made for each type of insurance contract. The specific terms should be defined by the parties by mutual content. That is, the specified, terms (amount insured, the object of insurance, etc.) may not fully coincide with the Rules of insurance if the party agree to that.

Therefore, we can assume that the contract of medical insurance is not the contract of adhesion in the common understanding. At while its conclusion the insured can offer some terms to the insurer and the latter can consider whether to accept them or not to accept.

Parties of contract of medical insurance

According to the legislative definition of the contract of insurance, the parties of contract of medical insurance are an insurer and insured.

Insurer. Insurance is a type of entrepreneurial activity, thus law sets some limitations relating the parties that can carry out such an activity.

An insurer is a legal entity that is specially created for the insurance activity and got a license for doing such an activity according to the law. Requirements that insurers should follow as well as a licensing of their activity and the forms of state supervision over the insurance activity are regulated only by a law⁷.

Insurers are the financial institutions that have been created in the form of joint-stock, complete or limited liability partnership, and also those which received the license for the insurance activity. The participants of an insurance agencies it must be not less than three⁸.

The terms «insurance agency», «insurance company», «insurance organization» and other similar terms are allowed to be used as the

⁷ T.V. Bodnar, O.V. Dzera, N.S. Kuznietsova and others, *Contractual law of Ukraine. Special part.*, Kyiv 2009, p. 761.

⁸ Law of Ukraine "About insurance". Retrieved June 15, 2015 from: <http://zakon5.rada.gov.ua/laws/show/85/96-%D0%B2%D1%80>.

name of only those legal entities that have a license for the insurance activity. According to the Law of Ukraine "On insurance" and the Law of Ukraine "On the financial services and State regulation of financial services" the legal entities acquire the status of the financial institution after putting the corresponding record about the registration of it into the State Register. The legal entity gets the right to exercise such an activity only after obtaining the appropriate licenses that can not be passed to any third parties⁹.

The insurers direct activity can only be insurance and reinsurance (insurance by one insurer on the certain contractual terms at the risk of implementation of part of the obligations by other insurer (reinsurer)) and financial activity, related with the formation, the placement of insurance reserves and their management.

The insurers that provide the life insurance, can give loans to the insured who concluded contracts of life-insurance.

Insurers can form unions, associations and other incorporations to coordinate their activities, to protect their interests and to implement some joint programs if their implementation is at law of Ukraine. However, these associations have no right to commit the direct insurance activity. The associations of insurers work on the statutory basis and acquire rights of legal entity after their state registration.

Individuals and legal entities for the purpose of insurance protection of their property interests can create partnerships of mutual insurance, under the legislation of Ukraine.

In Ukraine National joint stock insurance company "Oranta" takes one of the leading positions among all the insurance companies. It carries out all the types of medical insurance activity on the territory of Ukraine.

Insured. According to the Law of Ukraine "On insurance" insureds are capable individuals or legal entities that have concluded the contracts of insurance or are insured under the legislation of Ukraine.

As insurance relationships have the risky nature they remain under a constant influence of the person's legal capacity or incapacity. The right and obligations of the insured – the person that is confirmed legally incapable, are concluded by a guardian from the very

⁹ T.V. Bodnar, O.V. Dzera, N.S. Kuznietsova and others, *Contractual law of Ukraine. Special part.*, Kyiv 2009, p. 761.

moment person's incapacity is confirmed. Insured whose civil capacity is limited by the court, can not fully exercise their will under the contract of medical insurance, because it goes beyond the scope of capability of such a person. Such a realization can be executed only by the trustee in such cases.

As a rule, the insured is the person who is the bearer of the relevant risks. At the same time it is not excluded that a contract of medical insurance can contain as the subject the property and non-property interests of another person.

In a case of a death of insured at the conclusion of the contract of medical insurance for the benefit of the third person, the contract does not break as the subject of such a contract are property and non-property interests of the insured person. So this person can directly enter in the contract as the insured, having all the rights and obligations of the predecessor. If the person under different circumstances (age, health, being under guardianship, etc.) can not enter into a contract of medical insurance, the legal status of the insured under this contract can be vested to the parents, adoptive parents, guardians, trustees or other persons who are required to take measures to protect the rights and interests of such a person. Refuse of an adult capable person on the benefit of whom the insurance contract was concluded, from the rights and obligations under such a contract leads to the termination of a contract of health insurance with all the consequences due to the current legislation¹⁰.

The legislation allows the insured to conclude a contract of medical insurance for the benefit of the third person (insured person) or for the person who will, in case of insured event, acquire rights on the receipt of insurance settlement (beneficiary).

Appointment of a beneficiary is not determined to be an essential term of the contract of medical insurance that is why the insurer has the right to change beneficiary on his own by notifying the insurer. Thus a right on the change of a beneficiary can be limited by the contract of medical insurance.

The peculiarity of the legal status of the beneficiary is that he has the right to require the insurer's fulfillment of his obligations, includ-

¹⁰ T.V. Bodnar, O.V. Dzera, N.S. Kuznietsova and others, *Contractual law of Ukraine. Special part.*, Kyiv 2009, p. 757.

ing making an insurance settlement. At the same time, the insurer that concluded a contract of medical insurance for the benefit of beneficiary is not released from his obligations under the contract, even if it is concluded in favor of the beneficiary¹¹.

When the contract names the insured person and the beneficiary, the subject of this insurance contract is the interests of the insured person, but for the benefit of beneficiary. The replacement of the beneficiary after the occurrence of the insurance event is impossible, as after the event a new legal relationships arise, one of the parties of which is the beneficiary¹².

Nowadays, the compulsory medical insurance in Ukraine exists only on the level of projects and discussions.

During the signing of the contract of medical insurance the insurance rules define the list of insurance events and corresponding medical services that should be provided to the insured persons.

The contract of medical insurance must include:

- the medical insurance programs selected by the insured;
- the list of medical establishments the insured person has a right to apply to;
- individual insurance tariffs;
- the calculation of insurance payments for each insured person.

The insurance companies of Ukraine offer to choose between a standard complex insurance programs or private insurance programs. Overseas the full insurance program of a contract of medical insurance often includes assistance from about 1000 diseases, 1500–2000 individual medical services, united in the different sets¹³.

Insurance companies conclude contracts only with those medical hospital and establishments, which have passed state registration and accreditation.

These contracts contain following conditions:

- procedure of granting of medical services to the insured persons;
- provision of expertise;

¹¹ Ibidem, p. 760.

¹² Ibidem.

¹³ N.G. Nahaychuk, *Peculiarities of organization of medical insurance of population*, Retrieved June 15, 2016 from: <http://dspace.uabs.edu.ua/jspui/bitstream/123456789/1072/3/%D0%9D%D0%B0%D0%B3%D0%B0%D0%B9%D1%87%D1%83%D0%BA%201.pdf>.

– the possible discounts on the tariffs for medical care, etc.¹⁴.

The next level of conclusion of the contract of medical insurance is the determination of the insurance tariffs. They are defined as a percentage (usually they range from 10% to 30% per year from payment of the amount insured), or in absolute sums. The size of the insurance payments for each insured person is determined independently, taking into account the amount insured that are determined by the contract.

An insurance company plays an important part in the relationship between the patient and the medical establishment. It must protect the rights of the insured person, and also carry out the assistance in choosing a doctor, alternative treatment methods and medical institutions as well. Defending the interests of insured persons, an insurer may pay the losses connected with the harm to the health of the insured person caused by medical workers or medical establishments.

Conclusions

Summing up all mentioned above, it should be said, that the contract of medical insurance is the autonomous, paid, bilateral, real and public contract. It cannot be defined as a contract of adhesion in the common understanding.

The parties of the contract of medical insurance are insurer and insured and also the insurance relationship can have place between the insured person and the beneficiary as well.

¹⁴ Ibidem.