

Medical Services Contracts: Features and Ways of Improvement

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ABSTRACT

Availability of law is of particular importance in the modern world, which significantly increases the demand for language simplicity and understandability of legal acts: normative, law-enforcement, contractual ones. The contract for the provision of reimbursable medical service is a vivid example of a legal text for which the value of linguistic accessibility is especially significant. The study aims to assess the linguistic and other means used in the contract for the provision of reimbursable medical services, in terms of their effectiveness in achieving the goals for which the contract is concluded. As a material for analysis, we used contracts for the provision of fee-based health-care services of a number of medical institutions in the city of Volgograd. The study allowed to conclude that entering into a contract may actually pursue one or more of the following objectives: *to legally secure the medical institution from possible claims on the part of a service recipient; to inform the patient about the possible risks associated with medical intervention; to inform patients about the content of current legislation; to confirm the fact that the patient is familiarized with the internal current rules of the medical institution.* The scope, content, style of presentation of the contract should be determined by the priorities in achieving its

goals. From this follows the conclusion that the unification of the contract for the provision of medical services is inappropriate. The study shows that the quality of the contract for the provision of medical services is largely guaranteed by an optimal balance between the two requirements: the language availability of its content for the recipient of the services and the legal sufficiency of the provisions laid down in the contract to prevent possible conflicts between the parties. Relevant to any type of contract, these requirements are of particular importance for the analyzed agreements, taking into account the specifics of the psychological and ethical aspects of the emerging legal relationship.

Keywords: language of law, contract, contract language, medical service, patient-physician relationship.

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INTRODUCTION

Accessibility of law is of particular importance in the modern world due to the increase and acceleration of information flows, the change in people's attitude to information and the ways of providing it, the development of scientific ideas about human behavior and the ways of influencing it. Moreover, the demand for language accessibility and comprehensibility of legal acts – normative, law-enforcement, contractual ones – has significantly increased [1].

Problem Statement

The contract for the provision of reimbursable medical services is a vivid example of a legal text for which the value of language accessibility is especially significant. Clients of a medical institution - consumers of services are people with a completely different amount of knowledge, level of education and, as a rule, people without skills to work with legal documents (owing to the fact that this skill is a specific one, therefore, statistically, a smaller part of society possesses it). Almost always, the client does not have much choice when signing the contract, because this is a condition for receiving the necessary medical care. As a rule, the need to sign “some papers” is perceived as a compulsory formality and does not involve either discussion or even familiarization with the contents of the document. The latter is indicated by the traditional form of its submission – in order to save paper,

the text of the contract is printed out in the smallest available font (elderly patients, patients with visual impairment cannot read such a document if they wish, however, it is offered to sign it in this form even to clients of ophthalmologic clinics, which only emphasizes the formalism of this procedure).

The analysis of the content of the contracts for the provision of reimbursable medical services also indicates the presence of controversial, not well thought out points, including those related to the linguistic quality of the contract texts [2].

Research Questions

The study aims to tackle a number of issues. What are the goals of making a contract for the provision of medical services? What linguistic means and means of legal techniques lead to the most effective achievement of these goals? What are the negative consequences of using the wrong means, and is the formalization of the content of the contract able to prevent such consequences?

Purpose of the Study

The purpose of the study is to evaluate the linguistic and other means, used in the contracts for the provision of reimbursable medical services, in terms of their effectiveness, as well as to identify criteria for determining the optimal amount of information and ways of its presentation in the contract.

RESEARCH METHODS

The work employed formal legal, comparative, functional, linguistic methods. As a material for our analysis, we used contracts for the provision of paid medical services of the following medical organizations in the city of Volgograd: Volgograd branch of the Federal State Autonomous Institution "National Medical Research Center "Intersectoral Scientific and Technical Complex "Eye Microsurgery named after Acad. S.N. Fedorov" of Ministry of Health of Russia ("Eye Microsurgery named after Acad. S.N. Fedorov", Limited Liability Corporation "Multidisciplinary Medical Center "Dialine" (MMC "Dialine"), Federal state-financed organisation of Health service "Volgograd Medical Clinical Center of the Federal Biomedical Agency" (Volgograd Medical Clinical Center), Private healthcare institution "Clinical Hospital Russian "RZHD-Medicina" of the city of Volgograd" (Department Clinical Hospital), Federal State-Funded Scientific Institution "Research Institute of Clinical and Experimental Rheumatology" (Research Institute of Clinical and Experimental Rheumatology), State-Funded health institution "Volgograd Regional Clinical Hospital No. 3", Limited Liability Company "YugMed-Region" (LLC "YugMed-Region") and Limited Liability Company "Panacea" (LLC "Panacea").

The authors compare similar sections of contracts for the provision of medical services, identifying the best practices and typical weaknesses. This allows us to make a conclusion about these or those means aimed at achieving the goals of entering into a contract.

Findings

The structure and content of the contracts mainly correspond to traditional standards, so we will not dwell on their general features, focusing only on the differences.

First of all, the terminological differences regarding the designation of the parties of the contract are noteworthy.

We must note that in the analyzed agreements different names for contract parties, involved in providing medical services are used. For instance, in the contract of the Volgograd Medical Clinical Center, the Contractor provides paid medical services to the *Customer / Consumer*, in the agreement "MMC Dialine" to the *Consumer*, and in the contract of "Eye Microsurgery named after Acad. S.N. Fedorov" – to the *Patient*.

The contract of the Volgograd Medical Clinical Center in paragraph 4.4 states that if the *Customer* and the *Consumer* are the same person, the contract is drawn up in duplicate (We leave on the conscience of the authors of the contract some spelling and punctuation mistakes. Quoting the provisions of the contracts, we will not deliberately dwell on the linguistic errors encountered in their texts. We should only note that these errors are numerous, and that they can significantly reduce the authority of not only the document itself, but also the medical institution as a whole in the eyes of an educated patient).

In the agreement of "MMC "Dialine", as it has been noted above, one of the parties is the *Patient*. At the end of this agreement it is indicated that the signature is put by the

Patient / Legal Representative. In the contract of "Eye Microsurgery named after Acad. S.N. Fedorov" the roles of the *Customer* and the *Consumer* are not specified, but two places are left for the signature of one and / or the other.

Thus, it should be noted that in the analyzed agreements for the provision of reimbursable medical services there is no uniformity in the use of concepts denoting the parties to the contract. In the scientific literature, various options are also used, for example, "contractor" and "service recipient" (the customer – patient, the insurer or the 3rd person in the interests of the patient) [3].

We are going to discuss the section "subject matter of the contract", where the medical services that the Contractor is ready to provide are listed in more or less detail.

The specific services provided are rarely listed in the text of the contract. For example, in the contract of the Volgograd Medical Clinical Center in paragraph 1.1 we read: "The customer entrusts, and the Contractor assumes obligations to provide the following medical services to the Consumer" ... According to the rules of the Russian language, after the words *the following*, a certain list is supposed to be, which in this case is absent. In brackets there is information that the name of the medical service "*can be indicated by means of the code (,) used to designate the corresponding medical service in the Contractor's Price List or by means of the direct name of the service*". However, the difficulty lies in the fact that the contract is often signed before the patient's direct contact with the physician, and, therefore, neither the exact diagnosis, nor the list of services necessary for a particular patient are unknown at this time.

To solve this problem, a blanket method can be used. In the contract of "Eye Microsurgery named after Acad. S.N. Fedorov" it is indicated that the list of paid medical services is specified "*in the medical record of an ambulatory patient or in the medical record of an inpatient*". This is the most concise variant, just referring to another document, where the services provided to a particular patient must be listed in detail.

Some contracts do not have a list of services. In the agreement of "MMC Dialine" in paragraph 1.1 it is only noted that the Contractor provides medical services "*in accordance with the standards applicable in the territory of the Russian Federation*".

Agreements in which it is traced the desire to simplify the text as much as possible, including, on the one hand, simplification of the language due to clearer wordings, and on the other hand, simplification of the contents due to refusal to reproduce unnecessary constructions (for example, duplicating the provisions of the current legislation, local acts and other documents) [4], seem to us the most successful. An important section of the contract for the provision of medical services is the section "Liability of the Parties", the need for which is explained by the possible risks arising from medical interventions. In the dissertation by I. G. Lomakina, it is noted that "the relations arising as a result of the provision of paid medical services to citizens have such a significant peculiarity that this circumstance does not allow for adequate legal protection of their participants through only general provisions of conventional law [5; 6]. The lack of uniform

special legislation in the field of medicine creates the conditions for legal uncertainty in the regulation of these relations" [7].

Moreover, the law establishes that the patient must be informed of all possible risks and must "give his consent to medical intervention, taking into account these risks". As a result, as the analysis of contractual texts shows, the contractor seeks to describe them (risks) in as much detail as possible. The situation is complicated by the fact that medical care is "often unpredictable, involving the risk of doing harm to public health and life and can be regarded as a source of increased danger, i.e. will entail the prosecution of performers in all cases" [8].

Hence the special attention is given to circumstances exempting the contractor from liability. Thus, the Department Clinical Hospital contract contains a detailed list of situations which exempt the Contractor from responsibility, including "in case of complications (,) that may arise as a result of biological, age and other characteristics of the Customer's body, provided that the requirements, prescriptions and recommendations of the physician are correctly observed".

Most contracts list force majeure that may interfere with the proper delivery of the medical service. The legislator, reinforcing the concept of force majeure, chose an abstract method, defining it as circumstances that are extraordinary and insuperable under the given conditions (Clause 3, Article 401 of the Civil Code of the Russian Federation). But in practice, avoiding possible discussions in the interpretation of this legal structure, drafters of contracts more often prefer the casuistic way of determining force majeure [9].

For example, in the Contract of the Research Institute of Clinical and Experimental Rheumatology in the section "Liability of the Parties", the following is noted: "None of the Parties will be liable for the full or partial non-fulfillment by the other Party of their obligations (,) under this Contract, if the non-performance is the result of force majeure". Further, these circumstances are revealed: "Fire, flood, earthquake, strikes and other natural disasters (the strike does not seem to be rightly classified as natural disasters - approx. Author), war and military operations or other circumstances, which are beyond the control of the Parties, that impede the implementation of the current Contract and which arose after entering into the contract, as well as on other grounds prescribed by law".

In the Agreement of YugMed-Region LLC, the list of force majeure is somewhat different, but even more detailed. It is noted that none of the Parties to the Contract "bears responsibility to the other Party for failure to fulfill obligations due to the circumstances arising beyond the will and desire of the Parties (,) and which cannot be foreseen or avoided, including declared or actual war, civil unrest, epidemics, blockade, earthquakes, floods, fires and other natural disasters, acts of state bodies and actions of the authorities."

It is necessary to note that the authors of some agreements follow the path of minimizing the text and avoid the voluminous list of force majeure. For example, in the Contract of the Volgograd Regional Clinical Hospital No. 3 in the section "Liability of the Parties" it is rather concisely

stated: "The Contractor shall be exempt from liability for failure to perform or improper performance of obligations under this Contract if he proves that this happened due to force majeure, violation by the Customer of his duties or on other grounds provided by law".

Another possible item related to issues of liability of the parties are the grounds for termination of the contract unilaterally. The contract of LLC "Panacea" lists the following ones:

"non-fulfillment of medical prescriptions by the Patient;

- non-observance by the Patient of the Contractor's Internal Rules;

- the Patient's incorrect behavior in relation to the clinic staff and / or other patients (non-observance of generally accepted ethical rules, insulting or baseless / unconfirmed charges against the clinic staff and / or other patients, dissemination of false information about the clinic, clinic staff, disrespect to employees of the clinic and / or other patients);

- when the Patient visits the clinic in a state of alcohol or drug intoxication;

- if the Patient evades paying for the clinic services".

We draw attention to the list of evaluative, ambiguously interpreted concepts explaining to the Patient what incorrect behavior is: insulting ..., disseminating false information ..., showing disrespect ... The authors of the document, instead of inviting the Patient to familiarize themselves with the existing in the clinic *Rules of internal regulations*, included the information from the *Rules* in the text of the Contract [10; 11].

In the Western countries, the ethical side of drawing up contracts for the provision of medical services is actively discussed, since the patient, being unprotected, not having special knowledge in the field of treatment, is forced to sign a public contract offered to him by a medical institution or refuse services. In some cases, the patient, having a limited choice of health care providers due to his / her place of residence / location, insurance conditions and financial resources, due to illness or knowledge base cannot freely refuse this contract [12]. Patients may feel compelled to sign a clinical contract for fear of jeopardizing their relationship with the physician and not being able to receive the medical treatment they need. The authors of the research emphasize the need to avoid harming the relationship between the patient and the physician [13]. The desire of a medical institution through a contract to notify the patient of all possible risks, dangers, rules and requirements, from this point of view, appears to be an act of psychological pressure on a person in need of help. A long list of obligations and reservations gives him the impression that he is forced to agree in advance that he will not receive any help. It is important that the patient understands that providing medical treatment is the main doctor's goal. That is why, in American jurisprudence, it is recognized that when the professional services of a physician are accepted by another person for the purposes of medical or surgical treatment, the relation of physician and patient is created; the relation is a consensual one wherein the patient knowingly seeks the assistance of a physician and the physician knowingly accepts him as a patient. The relationship between a physician and

patient may result from an express or implied contract, either general or special, and that the rights and liabilities of the parties thereto are governed by the general law of contract, although the existence of the relation does not need to rest on any express contract between the physician and the person treated; however, the voluntary acceptance of the physician-patient relationship by the affected parties creates a *prima facie* presumption of a contractual relationship between them [14].

When concluding a contract, foreign researchers recommend to be particularly careful in the physician-patient relationship regulation, which are burdened with such clinical situations as regulation of opioid prescription, fair distribution of organs for transplantation or prevention of abusive treatment to the clinic staff. Many of these contracts are used for educational purposes, that is, to familiarize the patient with the list of resources and how to use them, some to strengthen patients' responsibility for improving health and motivating behavior changes. The provisions of such a contract should be clearly stated in simple and understandable language for all possible understanding by the patient. It is noted that patients should not consider that their medical care may be discontinued at any time due to any violation, otherwise they will not be able to communicate openly with their physicians or participate in joint decision-making [13: 15-21].

Thus, the text of the civil contract is a phenomenon of legal communication. Entering legal communication with a consumer of a medical service, the contractor, in order to avoid conflicts, often tries to include in the contract for the provision of medical services an excessive amount of additional information.

On the one hand, the Rules for the provision of paid medical services by medical organizations (approved by Decree of the Government of the Russian Federation No. 1006 dated October 4, 2012) contain a “**very limited**”, according to some researchers, scope of the mandatory terms of the contract [8], which requires detailed elaboration taking into account the specifics of a particular medical institution. On the other hand, the excessively detailed representation and information overload of the texts of contracts can be explained by the desire of the authors “**to be as informative as possible** (under the circumstances of insufficient legal literacy of the participants in the legal relationship, subjective difficulty for them to access and understand legislative texts [22; 23].

Let us pay attention to one more peculiarity: if texts of regulatory legal documents bear the imprint of the linguistic personality of the [24], the linguistic identity of the author of civil law contracts is reflected in their texts even more, because, unlike the law, for the contract the presence of a collective author is much less common.

Often, a contract for the provision of medical services may be competently drafted from the legal point of view, but at the same time demonstrate low speech competence of the author, which is expressed in grammatical and syntactic errors, **tautology** (“*specify by means of specification*”, “*pays for paid medical services*”, etc.), abundance of complex language structures. All this negatively affects the image of a medical institution.

At the same time, the faults in the contract for the provision of reimbursable medical services, in addition to legal ones, can entail other negative consequences. In particular, they can adversely affect the psychological state of the patient, and, ultimately, have detrimental effect on therapy outcome.

CONCLUSIONS

All of the above does not at all indicate the need for a total unification of contractual texts. Quite the contrary, the absence of a single universally accepted form of the contract makes it possible to improve it as much as possible, to work out the contents and style, taking into account those goals that are of priority to the author. So, to achieve the main goal for which this contract is usually signed – *to legally secure the medical institution from possible claims by the recipient of the service* – there is no need to duplicate the provisions of the current legislation. It is enough to confine oneself to references to the rules, which will be valid regardless of the indication of them in the contract, supplementing them with clear language of conditions requiring the consent of the parties.

If the author of the contract *seeks to inform the patient of the possible risks associated with medical intervention*, the document will inevitably be filled with a frightening description of the complications and other negative consequences.

Taken into account the lack of special legal knowledge among a significant number of citizens, the text of the contract may aim *to inform patients about the content of the current legislation*. In this case, the legal norms are reproduced in the contract, significantly increasing its volume.

Another possible goal *is to confirm the fact that the patient is familiarized with the internal rules in force in a medical institution*. The blanket method is probably much better for this. If the relevant rules are presented to all clients of the institution in an accessible form (placed on an information stand, offered in the form of a memo or booklet, etc.), it is enough to add in the contract only a line about the obligation to comply with them [25, 26].

Moreover, in all cases, it is advisable to exclude from the text repetitions and complex constructions that increase the volume, but do not carry significant semantic content [27].

Thus, the quality of the contract for the provision of reimbursable medical services for a large extent is determined by the observance of the optimal balance of two requirements: the language *accessibility* of its content for the recipient of the services and the legal *sufficiency* of the provisions laid down in the contract to prevent possible conflicts between the parties. Relevant to any type of contract, these requirements are of particular importance here, taking into account the specifics of the psychological and ethical aspects of the emerging legal relationship.

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