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## **THE RELATIONSHIP OF STATE AND PUBLIC CONTROL IN THE FIELD OF HEALTH CARE**

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**The scientific article focuses on factors that indicate the relevance of the study of state and public control in the field of health care as an object of legal regulation. Such factors include the unsatisfactory state of health of the population, the observance of human rights in the field of health care, the quality and efficiency of the medical reform, the quality of the provision of medical services, etc. Therefore, the study of the characteristics of the relationship and legal regulation of state and public control in the field of health care is extremely relevant.**

**In order to thoroughly reveal the purpose of the scientific article, the concept of the category “control” in various spheres of social existence was investigated and the peculiarities of control were considered through the prism of the opinions of experts in legal scientific research. The existing legislative provisions and the established practice of state and public control in the field of health care are analyzed. The existing regulatory and legal basis for monitoring compliance with legislation in the field of health care in Ukraine by the state and public organizations is characterized. The activity of subjects of state and public control and supervision in the field of health care is characterized.**

**The competence and powers, the order of formation and regulation of the performance of their functions by the bodies of state and public control of the supervisory boards at health care institutions and management bodies of the health care system were studied. The procedure for public control by members of observation and public councils is determined. Issues within the competence of the specified councils were considered. It was found that their**

**main authority is to control compliance with the legislation in the activities of a certain authority or health care institution.**

**Key words: control; public; state supervision; public control; supervisory board; safety; health care.**

**Formulation of the problem.** One of the most important conditions for ensuring discipline and legality during the implementation of any activity is the constant monitoring of its development, within which deviations from the established vector of its development are detected, providing possible recommendations for increasing its productivity. Such monitoring is usually carried out as part of the control and supervision measures in the relevant industry. In the field of health care, given its importance in the context of the functioning of the state and the existence of society in general, the implementation of state and public control is extremely important. The implementation of control in the specified area encourages the establishment of appropriate public legal relations with their characteristic composition. As a key element of the latter, the subjects of such control and their relationship should be considered, because they are the axis around which legal ties are formed. That is why the study of the ratio of state and public control in the field of health care is endowed with special relevance.

**The purpose and objectives of the publication.** The purpose of our study is to determine the range of subjects of state and public control in the field of health care and to investigate their relationship when establishing relevant legal relations.

**Analysis of the study of the problem.** The issues of control over the activities of health care bodies were indirectly revealed in the works of E. Beley, M. Vikhlyaev, N. Gaeva, O. Dulina, I. Zharovska, A. Myronov, G. Mulyar, O. Panova, I. Senyuta, V Stetsenko, V. Teremetskyi, I. Chekhovskaya, O. Yaremny, and others.

However, the issue of the relationship between state supervision and public control in the field of health care remains poorly researched and regulated at the theoretical and legislative levels, which makes it expedient to analyze state and public control in the field of health care through the demonstration of: common features, differences and priorities in modern Ukraine .

**Presenting main material.** The basic function of any state, and especially one that proclaims itself as a social one, is to protect the health of every person, regardless of their financial situation and social status. In accordance with the preamble of the Charter of the World Health Organization, of which our country is a member, governments are responsible for the health of their peoples, and this responsibility requires the adoption of appropriate measures. Today, the problems of protecting patients' rights are not isolated and are relevant all over the world. However, the current state of the health care system in Ukraine directly affects the state of national security, which is subject to immediate and effective resolution.

As noted by O.F. Andriyka, while creating a strong, effective state, one should not forget about its main purpose – to reliably protect the interests and rights of people. For this, it is necessary to form an appropriate mechanism that would create the conditions for realization, means of protection of these rights and promote their further implementation. One of the guarantees of such service to human interests in the field of management can be control [1, p. 131].

An important factor that points to health care problems is the inadequate state of control over various aspects of such a complex field of activity as medicine. Perceiving control as an organizational and legal phenomenon, which is ultimately aimed at improving the state of affairs in the field of health care, it can be stated that the shortcomings of the control activity itself affect the shortcomings of the object of control, which is the medical sphere.

What is the importance of control in general and its division into public and state in particular, in the field of health care? We note that control is a way of ensuring legality, compliance with certain norms and discipline.

As rightly noted by S. G. Stetsenko – legality and discipline are necessary conditions for the existence of a democratic state. Their observance acquires a special role in the sphere of public administration. According to the scientist, the significance of due attention to ensuring legality and discipline in the field of public administration is as follows [2, p. 193–194]:

1. The need to ensure proper conditions of public administration in the economic, socio-cultural and administrative-political spheres of public life.
2. Law enforcement activities of public administration entities must be based on compliance with legality and discipline.
3. Law-making activity of public administration entities cannot contradict the provisions of the Constitution of Ukraine and those laws that are already in force.
4. The need to promote the implementation and protection of the rights, freedoms and legitimate interests of citizens by public administration bodies.
5. Legitimate use of means of state coercion by competent state bodies.

From the perspective of the study of state control V. S. Shestak suggests distinguishing presidential, parliamentary, control of executive bodies, control of courts of general and arbitration jurisdiction, judicial constitutional control, control of the Commissioner for Human Rights, prosecutorial supervision [3]

Regarding the issue of control by the public, among the subjects of this type of control, scientists single out citizens, general meetings of citizens, public inspections, public organizations and political parties, trade unions, public councils under state authorities and other participants of civil society

Legislative and by-laws establish the administrative and legal principles of public control in the field of health care. At the same time, the state should contribute to ensuring public access to participation in the formation and implementation of state policy.

Scientific literature indicates that “the presence of public control in any sphere of activity of state authorities is a manifestation of public society, which continues to actively develop in Ukraine” [4, p. 158]. In addition, it is indicated that public control is a unique way of establishing the interaction of state bodies with the public and allows “... to cover with control measures all objects under control, to obtain the most complete information about subjects under control and all spheres of their activity, to identify existing shortcomings and to formulate appropriate proposals for their elimination” [5, p. 335].

One should agree with the opinion of S. Vasiliev that “state supervision and public control in any sphere of economic activity are means of ensuring legality, as well as the rights and legitimate interests of citizens” [6, p. 56].

Let's consider the entities that monitor compliance with health care.

The system of subjects of state control in the field of health care can be presented through the prism of its constituent elements, which are actually such subjects, as well as connections that indicate the place and role of an individual subject in it. At the same time, the legal status of an individual subject of state control in the field of health care is fixed in the provisions of current national legislation, which should also be taken into account when determining the essence of their system.

The content of the system of subjects of state control in the field of health care can be determined depending on a certain criterion that will determine the place and role of an individual subject in it: the subject's affiliation to the relevant branch of government; his place in the hierarchy of state authorities; functional orientation, etc. [7]. However, we are inclined to think that as this criterion, it is most correct to choose a classification based on the scope of competence of such an entity and distinguish them into national, branch, and special ones.

In particular, state-wide subjects of state control and supervision in the field of health care should include those whose competence extends to all spheres of state administration. Among such entities, the Verkhovna Rada of Ukraine should be mentioned first of all, which, in accordance with Clause 33, Part 1

of Art. 85 of the Constitution of Ukraine exercises parliamentary control within the limits defined by the legislation [8] both through the adoption of laws, which corrects this sphere of social relations, responding to changes and challenges occurring within its boundaries, and through its structural subdivisions.

In addition, the field of health care is handled by the Human Rights Commissioner of the Verkhovna Rada of Ukraine, who is responsible for ensuring the rights and freedoms of individuals in any sphere of social relations. According to Art. 1 of the Law of Ukraine “On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights” of December 23, 1997, parliamentary control over the observance of the constitutional rights and freedoms of a person, a citizen and the protection of the rights of everyone on the territory of Ukraine within its jurisdiction is carried out on a permanent basis by the Commissioner of the Verkhovna Rada of Ukraine for Human Rights a person who is guided in his activities by the Constitution of Ukraine, the laws of Ukraine, current international treaties, the consent to the binding of which has been given by the Verkhovna Rada of Ukraine [9]. Given that the right to health care is one of the leading constitutional human rights, the Human Rights Commissioner of the Verkhovna Rada of Ukraine can be considered as a full-fledged entity that carries out state control and supervision in the field of health care.

The next national subject of state control and supervision in the field of health care is the President of Ukraine, who, in accordance with Art. 102 of the Constitution of Ukraine is a guarantor of compliance with the Constitution of Ukraine, the rights and freedoms of a person and a citizen. At the same time, as evidenced by the analysis of the prescriptions of the above-mentioned legal act [8], the President of Ukraine can be characterized as a full-fledged subject who carries out state control and supervision in the field of health care, since he: 1) provides regulatory and legal support for this area social relations through the issuance of relevant legal acts; 2) forms other subjects of these social relations, for example, appoints extraordinary elections to the Verkhovna Rada of Ukraine. In addition, the President of Ukraine, in accordance with Clause 18, Part 1, Art. 106 of the Basic Law of Ukraine is headed by the Council of National Security and Defense of Ukraine [8], which should also be considered as a state-wide subject of state control and supervision in the field of health care. In particular, in accordance with Clause 7, Part 1, Art. 8 of the Law of Ukraine “On the National Security and Defense Council of Ukraine” dated March 5, 1998, the competence of this subject includes the implementation of control over the activities of executive authorities in ensuring public health [10].

Among the sectoral subjects of state control in the field of health care, we can include the central bodies of executive power, the system of which, in accordance with the provisions of the Law of Ukraine “On Central Bodies of Executive Power” dated March 17, 2011, includes the ministries of Ukraine and other central bodies of executive power [11]. At the same time, the Ministry of Internal Affairs of Ukraine should be named among the central bodies of executive power, which have the legal status of a subject of state control in the field of health care, which, in accordance with the Regulation “On the Ministry of Internal Affairs of Ukraine”, approved by the resolution of the Cabinet of Ministers of Ukraine dated October 28, 2015 of the year No. 878, is the main body in the system of central bodies of executive power, which ensures the formation of state policy, in particular in the field of ensuring human rights and freedoms [12]. In addition, this group of entities includes the Ministry of Community and Territorial Development of Ukraine, whose main tasks, in accordance with the Regulation “On the Ministry of Community and Territorial Development of Ukraine”, approved by Resolution No. 197 of the Cabinet of Ministers of Ukraine dated April 30, 2014, include, in particular, the implementation of standardization in construction for the purpose of creating a safe environment for human life and health [13]. The Ministry of Social Policy of Ukraine is a sectoral subject of state control and supervision in the field of health care, since in accordance with the Regulation “On the Ministry of Social Policy of Ukraine”, approved by Resolution No. 423 of the Cabinet of Ministers of Ukraine dated June 17, 2015, it implements state policy on social protection of the population [14].

Special subjects that carry out state control and supervision in the field of health care are those for whom such activity is at least one of the main directions of their functioning. Among such subjects, the Ministry of Health of Ukraine, whose legal status is defined in the Regulation “On the Ministry of Health

of Ukraine”, approved by Resolution No. 267 of the Cabinet of Ministers of Ukraine dated March 25, 2015, according to which it is the main a body in the system of central bodies of executive power, which ensures the formation and implementation of state policy in the field of health care [15].

Therefore, the conducted analysis shows that the implementation of state control is entrusted to a number of entities authorized by the state, which together form a system of state-wide, branch and special bodies.

Next, we will consider the subjects of public control in the field of health care.

The issue of public control has repeatedly become the subject of research. Public control most often includes control by various public associations, trade unions, political parties, movements, mass media, and other organizations, as well as control by individual citizens aimed at protecting their personal rights or the rights of others. Thus, according to S. Kushnir, the subjects of public control are citizens, general meetings of citizens, public inspections, public organizations and political parties, trade unions, public councils under state authorities and other participants of civil society [16].

In the scientific literature, it is noted that public control is carried out by institutional structures of civil society, as well as by individuals who show public consciousness and activity [17, p. 59].

The reform of the medical sphere obliges state bodies to promote the realization of the right of citizens to participate in the management of health care. Thus, public participation in health care is provided for in the Law “Basics of Ukrainian legislation on health care” [18], namely that state bodies and health care institutions are obliged to promote the realization of the right of citizens to participate in management health care. Therefore, at state and communal health care institutions, supervisory and guardian councils are formed with the mandatory involvement of public representatives.

It should be emphasized that the existing public control structures do not have authority, unlike state control bodies. They control the government in a different way, in particular, through certain competent state bodies, they influence the state of affairs in the sphere that has become the subject of control.

Currently, there is no special law on public control in the national legislation, so a wide range of regulatory framework is designed to regulate the influence of the public on one or another sphere of public relations.

So, for example, the Constitution of Ukraine establishes that the bearer of sovereignty and the only source of power in Ukraine is the people, who are given the right to exercise their power both directly and through the bodies of state power and local self-government elected by them, to participate in the management of state affairs (Article 38), as well as through a referendum (Article 69) [8].

The Law of Ukraine “On Local Self-Government in Ukraine” (Article 13) establishes the possibility of implementing the GC by holding public hearings, during which the territorial community has the right to meet with council members and officials of local self-government, listen to them, raise questions and make proposals on issues, which belong to the local self-government department

The Law of Ukraine “On Public Associations” provides for the right of public organizations and their unions to apply to public authorities, their officials and employees with proposals, to receive public information that is in the possession of subjects of authority, other managers of public information.

The Law of Ukraine “On Appeals of Citizens” defines the right of citizens of Ukraine to apply to state authorities, local self-government bodies, and associations of citizens regarding the realization of their socio-economic, political and personal rights and legal interests, and their violation. The Law of Ukraine “On Information” enshrines the obligation of public bodies to inform about their activities and decisions made and gives the right to carry out GK in compliance with the legislation on information, etc.

Therefore, in contrast to state control, public control is not endowed with a rigid hierarchy. All subjects of public control are independent of each other and independent in developing a control strategy, forms and methods of their activity. They can unite in order to coordinate efforts in certain structures, but relations in such associations are built entirely on contractual, self-governing bases [19, p. 49]. The powerful nature of state control is manifested in the presence of the following powers in the control bodies: I) to oblige the objects under control to comply with instructions on the elimination of detected violations

and their prevention in the future; 2) raise issues before the competent authorities regarding the prosecution of persons guilty of committed violations; 3) directly apply measures of state coercion in established cases. Public control is not ensured by coercive measures and has a recommendatory nature, however, it has the ability to influence state structures in various forms and by various means, in particular by means of public opinion polls, conducting public examinations, activities of the mass media, etc.

The ratio of public and state opposition is directly related to the general characteristics of the state's political regime. In the modern transformational conditions of the development of Ukraine as a democratic, legal state, the formation of a developed civil society, the control of the state by society is a defining feature of democracy.

To a large extent, the quality of a person's life depends to a large extent on the state of health care control, on the state of the medical industry itself. Since this issue has a certain content in the medical and organizational-legal plane, in our opinion, it also concerns the issue of national security in general.

The formation of Ukraine as a democratic state, the corresponding transformations in society require the formation of a new concept of state management of the health care sector, the justification of the management system of its components. Among them, a special place is occupied by the ratio of state and public control and supervision in the field of health care, which is extremely complex, significant in scope and impact on the efficiency of the industry.

The realities of Ukraine testify to the correct orientation of public control in the field of health care. Proper public control over the activities of health care entities is a necessary condition for effective transformations in the medical field, which is an effective guarantee of social security and stability. However, taking into account both objective and subjective factors, many more efforts must be made to create an effective public control mechanism in our country.

**Conclusions.** Therefore, at the current stage of the development of a democratic Ukrainian state, there is a need for new approaches to control in the field of health care, which can be implemented by combining the systems of state and public control bodies and their legislative support, since such a tandem of two components will definitely affect the improvement the state of affairs in the field of health care, which, in turn, will have a positive effect on the development of a democratic society in a free and prosperous state.

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### **СПІВВІДНОШЕННЯ ДЕРЖАВНОГО ТА ГРОМАДСЬКОГО КОНТРОЛЮ У СФЕРІ ОХОРОНИ ЗДОРОВ'Я**

У статті зосереджено увагу на факторах, які свідчать про актуальність дослідження державного і громадського контролю у сфері охорони здоров'я як об'єкта правового регулювання. До таких факторів належить незадовільний стан здоров'я населення, дотримання прав людини у сфері охорони здоров'я, якість та ефективність здійснення медичної реформи, якість надання медичних послуг тощо. Відтак дослідження особливостей співвідношення та правового регулювання державного та громадського контролю у сфері охорони здоров'я є надзвичайно актуальним.

Для ґрунтового розкриття мети наукової статті досліджено використання категорії “контроль” у різних галузях суспільного існування та розглянуто особливості контролю через призму думок фахівців у наукових дослідженнях юридичного спрямування. Проаналізовано чинні законодавчі положення та усталену практику державного і громадського контролю у сфері охорони здоров'я. Охарактеризовано наявне нормативно-правове підґрунтя здійснення контролю за додержанням законодавства у сфері охорони здоров'я в Україні з боку держави та громадських організацій. Охарактеризовано діяльність суб'єктів державного та громадського контролю і нагляду в сфері охорони здоров'я.

Досліджено компетенцію і повноваження, порядок формування і регламентацію здійснення своїх функцій органами державного і громадського контролю спостережних рад при закладах охорони здоров'я та органах управління системою охорони здоров'я. Визначено порядок здійснення громадського контролю членами спостережних та громадських рад. Розглянуто питання, які входять до компетенції вказаних рад. З'ясовано, що їх головним повноваженням є здійснення контролю за дотриманням законодавства в діяльності певного органу влади або закладу охорони здоров'я.

**Ключові слова:** контроль; громадськість; державний нагляд; громадський контроль; наглядова рада; безпека; охорона здоров'я.