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THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER A MEDICAL INSURANCE CONTRACT

Abstract

The article examines the legal nature of the rights and obligations of the parties under a medical insurance contract. The author analyses the rights and obligations of the insurer and the insured under a medical insurance contract. As a result, the author concludes that within the scope of a medical insurance contract, the interest of one party can be satisfied only by satisfying the interest of the other party.

Keywords: medical insurance contract, insurer, insured.

THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER A MEDICAL INSURANCE CONTRACT

The content of a contractual agreement is composed of the rights and obligations of the parties. As regards the content of the specific rights and obligations of the parties to a contractual agreement, the contract serves as a means of regulating the behaviour of the parties in civil law relations.

The medical insurance contract is bilateral. Therefore, each party to a contract is endowed with mutual rights and obligations. Accordingly, it seems necessary to characterise the main obligations of the insurer and the insured.

The general rights and obligations of the parties to a medical insurance contract are provided for in Arts. 988, 989 of the Civil Code of Ukraine¹ and Arts. 20, 21 of the Law of Ukraine “On Insurance”.²

First, it is appropriate to proceed with the rights and obligations of the insurer under a medical insurance contract.

The first main obligation of the insurer when concluding a medical insurance contract is to acquaint the insured with the terms and conditions of insurance. If a medical insurance contract is concluded between the insu-

¹ Civil Code of Ukraine: Law of Ukraine of 16 January 2003, №435-IV. Update date: 1 August 2022. URL: <https://zakon.rada.gov.ua/laws/show/47-93/ed19930510#Text> (reference date: 1 September 2022).

² On Insurance: Law of Ukraine of 7 March 1996, №85/96-BP. Update date: 3 August 2022. URL: <https://zakon.rada.gov.ua/laws/show/85/96-%D0%B2%D1%80#Text> (reference date: 1 September 2022).

rer and the insured, the latter's subsequent reference to the fact that they were not acquainted with the terms and conditions of insurance should normally not be taken into account.³

Within two working days, upon the occurrence of an insured event, the insurer is obliged to take measures to prepare all the necessary documents to provide timely insurance coverage.

The insurer has the right to investigate independently the reasons and circumstances of an insured event. It can also make requests for information related to an insured event to law enforcement agencies, banks, medical institutions and other organisations that have information about the circumstances of an insured event. Those organisations are required to send a response to requests for information related to an insured event.

Once an insurance claim and all the necessary documents have been submitted in accordance with the contract (the terms and conditions of insurance), the insurer shall review the documents within the period stipulated in the contract and make one of the three decisions: provide insurance coverage, refuse to provide insurance coverage, or conduct an insurance investigation.⁴

The main obligation of the insurer under a medical insurance contract is to provide insurance coverage within the period stipulated in the contract upon the occurrence of an insured event. Therefore, when an insured event happens, the insurer is obliged to pay a compensation (part thereof) to cover the expenses for health care and medical services.

³ BODNAR T.V., DZERA O.V., KUZNETSOVA N.S. et al.; *Contract law of Ukraine. Specific cases: a textbook*, O.V. Dzera (ed.), Kyiv: Yurinkom Inter, 2009, p. 793.

⁴ MILOVSKA N.V., *Contractual obligations in insurance contracts in the civil law of Ukraine: problems of theory and practice: monograph*, Kyiv: Fedir Burchak Research Institute of Private Law and Entrepreneurship of the National Academy of Sciences of Ukraine, 2019, p. 257.

The obligation to provide the insured with insurance coverage arises only in the case where it is established that an insured event occurred. Otherwise, the insurer does not have the obligation to provide insurance coverage. The provision of insurance coverage is an obligation of the insurer, not a form of civil liability.

Insurance coverage under a medical insurance contract is provided regardless of a compensation paid under state social insurance, social security or a compensation for damages.

In accordance with Part 5 of Art. 268 of the Civil Code of Ukraine, the insurance claim made by the insured to the insurer for receiving insurance coverage is not subject to the statute of limitations.

The insurer bears property liability for untimely insurance coverage by paying the insured penal damages, the amount of which is determined by the terms of a medical insurance contract or by law.

The insurer provides insurance coverage by paying the expenses for the medical services and/or medicine to institutions that provided medical and/or other assistance to the insured within the scope of a medical insurance contract. Insurance coverage is provided on the basis of medical and financial documents confirming the services received by the insured, their cost (primary medical documentation or an extract from the medical history with an indication of the medical department, the disease, a list of performed procedures and measures, a list of medicines and materials, their price) and on the basis of the insured's insurance claim.

If the insured independently organised and/or paid for services within the scope of a medical insurance contract, the insurer provides insurance coverage directly to the insured on the basis of relevant documents. The decision to pay or refuse to pay an insurance claim is made by the insurer after receiving the last document within the period specified in a medical

insurance contract. The insurer pays an insurance claim or notifies the insured in writing of its refusal to pay an insurance claim within the period specified in a medical insurance contract from the day of the decision to grant or deny insurance coverage, unless otherwise provided by a medical insurance contract.

The size of insurance coverage depends on the price of medical services and/or medications provided for in a medical insurance contract. The total amount of payments for one or more insured events cannot exceed the insurance coverage established for the insured by the contract. Insurance coverage is provided by the insurer in accordance with a medical insurance contract on the basis of an insurance act drawn up by the insurer in the form determined by the insurer.

Therefore, the basis for the provision of insurance coverage by the insurer is a certain condition stipulated in a medical insurance contract, the insured's statement about the occurrence of an insured event and an insurance act on the insurer's recognition of the occurrence of an insured event.

The insurer pays an insurance claim (part thereof) in accordance with the terms and conditions of a medical insurance contract by covering the expenses for the medical services provided to the insured by a medical institution in connection with an insured event within the limits of the insurance programme and the insurance coverage specified in a medical insurance contract. A medical institution notifies the insurer of the occurrence of an insured event within the period stipulated in a contract with the medical institution.

An insurance claim (part thereof) can be paid by the insurer in accordance with the terms of a medical insurance contract by paying a pharmacy for the necessary medications and materials provided to the insured in relation to an insured event within the limits of the insurance programme and the insurance coverage determined by a medical insurance contract.

If the medical institution provided for in a medical insurance contract or another health care facility (if agreed with the insurer) does not have medicines and materials necessary to provide the insured with medical care, the insurer may offer a compensation to the insured for the cost of medicines and materials purchased independently. In that case, the insured needs to provide receipts from pharmaceutical companies.

A medical insurance contract may stipulate that the insurer can pay an insurance claim (part thereof) to the insured directly or provide insurance coverage by paying for the services received by the insured in health care facilities that are not listed in a medical insurance contract, and with which the insurer does not have a cooperation contract.

The insurer can pay an insurance claim (part thereof) through the cash desk or by non-cash means, in accordance with the terms and conditions of a medical insurance contract.

The occurrence of an insured event is not an unconditional basis for the provision of insurance coverage. The insurer has the right to refuse an insurance claim in the cases specified in Art. 991 of the Civil Code of Ukraine and Art. 26 of the Law of Ukraine “On Insurance”. Corresponding additional grounds may also be stipulated in the terms and conditions of a medical insurance contract, provided that it does not contradict the law.

The right to refuse an insurance claim means that if there is an obligation to pay, the insurer has the right to refuse unilaterally to fulfil that obligation. As a rule, the list of grounds stipulated in a medical insurance contract for the insurer’s refusal to pay an insurance claim affects the cost of insurance services, since the insurance of the insured’s property interests with a smaller number of grounds for the insurer’s refusal to pay an insur-

ance claim normally costs more than insurance with a large number of grounds for such refusal.⁵

By their nature, the insurer's actions regarding the refusal to pay an insurance claim are a unilateral act that does not require an appeal to the court regarding the non-fulfilment of the obligation to provide insurance coverage.⁶

The list of the grounds for refusal is not exhaustive, as it can be expanded by law and a medical insurance contract. In the meantime, the insurer's precarious financial position is not a reason to refuse an insurance claim.

When measures are taken to reduce an insurance risk, the insurer, at the insured's request, is obliged to renegotiate a medical insurance contract. An insurance risk, as a dynamic category, can increase or decrease. Pursuant the provisions of Art. 651 of the Civil Code of Ukraine, as a general rule, the parties can renegotiate a medical insurance contract by mutual agreement. Nevertheless, if measures are taken to reduce an insurance risk, the insured has the right to request a renegotiation of a medical insurance contract. The actions aimed at reducing an insurance risk are performed by the insurer, but such actions may also be performed by the insured, since it is as a result of the latter's activity that an insurance risk can increase or decrease.

The insurer shall not disclose information about the insured and their property status, except in cases established by law. It concerns information that constitutes an insurance secret, i.e. such information that can be classified as a personal, family, official, commercial or other secret that is subject to legal protection. According to Art. 40 of the Law of Ukraine "On

⁵ MILOVSKA N.V., *Contractual obligations in insurance contracts...*, p. 257.

⁶ SOBOTNYK R.V., *Civil liability insurance contract for damage caused by a source of increased danger*: PhD thesis: 12.00.03. Kyiv, 2015, p. 90.

Insurance”, an insurance secret is confidential information about the activity and financial condition of the insured that became known to the insurer from the client (the insured) or a third party through activities in the field of insurance, the disclosure of which may cause material or moral damage to the client (the insured).

The insurer is held accountable by the current legislation for the disclosure of information about the insured or a third party received in connection with the performance of insurance activities. Information on the activities and financial situation of the insured can be provided by the insurer only upon a written request of the court, law enforcement agencies or tax authorities regarding the insurance operations of a specific legal entity or an individual under a given insurance contract in the event of criminal proceedings against that individual or legal entity.

The parties shall notify each other in a timely manner of a change of address, bank details or other changes that may affect the parties’ performance of their obligations under a medical insurance contract.

A medical insurance contract may also specify the following obligations of the insurer:

- arrange for the insured to receive medical services stipulated in a medical insurance contract, control their number and quality;
- protect the interests of the insured in the event of damage to their health by a medical institution;
- reimburse the losses suffered by the insured upon the occurrence of an insured event due to the non-fulfilment or improper fulfilment of the insurer’s obligations regarding the organisation and provision of medical services;

- provide the insured (at their written request) with a report of the insurance coverage provided under a medical insurance contract on the date of the request for such a report and the declared but not paid insurance claims on the date of the request.

The terms and conditions of a medical insurance contract may also stipulate other obligations of the insurer. The extent of the insurer's obligations under a medical insurance contract is determined by a list of insured events, upon the occurrence of which the insurer is obliged to pay insurance claims.

The rights of the insurer are contained in the terms of medical insurance and derive from a medical insurance contract in accordance with the current legislation of Ukraine. Accordingly, the insurer has the right to:

- demand, when concluding a medical insurance contract, a medical examination of the persons to be insured and, based on its results, make a decision regarding their acceptance for insurance;
- require that the insured provide the necessary information that is important for assessing the degree of an insurance risk;
- postpone the decision on paying or refusing to pay an insurance claim by notifying the insured in writing;
- check the information provided by the insured, make requests to competent authorities about the information necessary to learn the circumstances of an insured event, the causes and consequences of its occurrence;
- demand a medical examination of the insured by a trusted physician of the insurer after the occurrence of an insured event before and/or after the provision of medical services. The insurer also has the right to perform a medical examination with the help of authorised doctors

- or specialists of an expert commission to verify the correctness of the diagnosis and the prescribed course of treatment;
- initiate amendments to the medical insurance contract and to demand from the insured an additional insurance premium if there is an increase in an insurance risk;
 - prematurely terminate the medical insurance contract if the insured did not notify the insurer of significant circumstances necessary for an assessment of an insurance risk when concluding the contract or did not notify of a change in such circumstances during the contract's term of validity;
 - refuse to provide insurance coverage (part thereof) in the cases stipulated by the medical insurance contract.

The terms of a medical insurance contract may also provide for other rights of the insurer. Therefore, the insurer occupies a special place in the legal relations governing the signing of a medical insurance contract, since it is with their actions that the achievement of the main goal of such relations is possible – the provision of insurance coverage in the amount and in the cases provided for in a medical insurance contract.

According to Art. 989 of the Civil Code of Ukraine and Art. 21 of the Law of Ukraine “On Insurance”, the main obligation of the insured is to pay for the insurance services (an insurance premium) in the amount established by a medical insurance contract.

The first insurance premium marks the entry into force of a medical insurance contract.

The Civil Code of Ukraine in Part 2 of Art. 997 stipulates that if an insurance premium is delayed and is not paid within 10 working days after the insurer submits a written demand for payment of an insurance pre-

mium, the insurer may withdraw from a medical insurance contract, unless otherwise stated. Insurance premiums that have already been paid are fully reimbursed by the insurer if the insured's withdrawal from the contract is due to the insurer's violation of the terms and conditions of the contract or withdrawal from the contract. Insurance premiums for the period remaining before the expiration of a medical insurance contract are reimbursed by the insurer if the insured withdrew from the contract, or if the insurer's withdrawal from the contract is caused by the insured's non-fulfilment of the terms of the contract.

When concluding a medical insurance contract, the insured is obliged to provide information to the insurer about all known circumstances that are of significant importance for an assessment of an insurance risk and to further inform the insurer of any change in an insurance risk. The insurer has to be informed about the circumstances that are important for an assessment of an insurance risk at the time of concluding a medical insurance contract as well as during its term of validity. The insured is obliged to report only such circumstances that are of significant importance for determining the probability of the occurrence of an insured event and the amount of possible losses from its occurrence.

Circumstances, the knowledge of which would lead to a refusal to conclude a contract or significantly change the pricing of an insurance contract, must be recognised as significant. In the meantime, the concept of "significance", provided that it has an evaluative nature, has to be determined in each specific case with regard to the general principles of civil law regulation. The insured shall report only the circumstances known to them, and not those that they should have known, but actually did not know. The fact that

the insured did not know about said circumstances does not entail adverse consequences, namely the insurer's refusal to pay an insurance claim.⁷

If the insured provides false and incomplete information about the subject of insurance, the assessment of an insurance risk can no longer be considered objective. In that case, the behaviour of the insured has to be accompanied by the willingness to mislead the insurer knowingly as regards the information about the subject of insurance. Furthermore, the insured shall inform the insurer of the fact that upon the occurrence of an insured event more damage will be caused than is normally caused in such cases, e.g. the presence of allergic reactions in the insured's outpatient card.

When concluding a medical insurance contract, the insured shall inform the insurer of other insurance contracts concluded in relation to the insured object. Insurance cannot be aimed at enriching the insured. If the insured has not informed the insurer that the insured object is already insured, a new medical insurance contract is null and void (Pt. 3 of Art. 989 of the Civil Code of Ukraine).

The insured shall take measures to prevent and reduce losses caused by the occurrence of an insured event (Pt. 4 of Art. 989 of the Civil Code of Ukraine, Art. 21 of the Law of Ukraine "On Insurance").

Such actions of the insured shall meet the requirements of reasonableness. Reasonableness should be evaluated on the basis of the costs that are necessary to take said actions, compared to the amount of reduced damages. In particular, the insured's actions aimed at preventing the occurrence of losses, the cost of which significantly exceeds the achieved savings, are deemed unreasonable. The insured's actions shall be accessible, i.e. possible to be taken by the insured without turning to third parties or, based on a specific

⁷ BODNAR T.V., DZERA O.V., KUZNETSOVA N.S. et al.; *Contract law of Ukraine...*, p. 793.

situation, by turning to other persons, etc.⁸, for example, the insured is to take care of their health, not to harm it and not to create an additional risk of the insured event.

The insured is obliged to notify the insurer of the occurrence of an insured event within the period specified in the medical insurance contract. A timely notification of the insurer of the occurrence of an insured event is necessary to investigate all the accompanying circumstances and quickly make a decision on recognising the event as insurable or not.

The insured, personally or through other persons, is obliged to notify the insurer of the occurrence of an insured event within 24 hours (as a rule, in practice the said notification period is stipulated) and provide the following information: medical insurance contract number, first name and surname, a detailed description of the circumstances of the case and the nature of the assistance required. The insurer conducts an identification procedure and organises medical assistance within the framework of a medical insurance contract. The insurer guarantees the provision of health care exclusively in medical institutions specified in a medical insurance contract. In exceptional cases (urgent health care, lack of local medical facilities with which the insurer cooperates), the insured may receive services at another medical facility and notify the insurer of it at the first opportunity.⁹

The terms of a medical insurance contract may provide for other actions of the insured upon the occurrence of an insured event.

⁸ BODNAR T.V., DZERA O.V., KUZNETSOVA N.S. et al.; *Contract law of Ukraine...*, p. 793.

⁹ Rules of voluntary insurance of medical expenses. Ukrainian insurance group. Kyiv. 2005, p. 6. Registered by the State Commission for Regulation of Financial Markets of Ukraine No. 2150770 of 25 August 2005. URL: <https://ukringroup.ua/ua/help/policies> (reference date: 1 September 2022).

The current legislation does not establish an exhaustive list of the insured's obligations. It can be extended by a medical insurance contract if it is necessary for its proper implementation. A medical insurance contract may additionally provide for the following obligations of the insured:

- to provide the insurer during the contract's term of validity with a written application to receive a duplicate of the medical insurance contract or a document certifying the conclusion of a medical insurance contract in the case of its loss;
- to notify the insurer of any change in an insurance risk; in the case of an increase in the degree of risk, conclude, at the request of the insurer, an additional agreement to the medical insurance contract and pay an additional insurance premium.
- to agree with the insurer on all actions related to obtaining medical services upon the occurrence of an insured event;
- to comply with orders and/or recommendations of the insurer;
- to grant the right of access of the insurer's expert doctors and authorised representatives to all medical, financial and other documentation related to an insured event;
- to get acquainted with the terms and conditions of insurance, etc.
- Analysing the rights of the insured under a medical insurance contract, the following rights can be singled out:
 - to receive paid medical services upon the occurrence of an insured event under the conditions provided for in a medical insurance contract;
 - in the case of an insured event, to receive insurance coverage in accordance with the procedure and terms stipulated in a medical insurance contract;

- to receive paid medical services on terms different from those stipulated by a medical insurance contract, subject to a prior written agreement with the insurer;
- in accordance with the current legislation of Ukraine, to file a lawsuit against the insurer or a medical institution in the event of damage to the insured due to their fault;
- to demand compensation from the insurer for the medical services provided to the insured within the limits stipulated by the terms of a medical insurance contract;
- to select doctors and medical institutions for obtaining the necessary medical services from a list proposed by the insurer;
- to change the terms of a medical insurance contract in the event of a change in an insurance risk;
- to terminate a medical insurance contract prematurely;
- to get a duplicate of a medical insurance contract in the case of a loss of the original, etc.

To conclude, it is worth noting that the basis for the emergence of legal relations in medical insurance is a contract as a legal fact that gives rise to the civil rights and obligations of each of the parties. Within the scope of a medical insurance contract, the interest of one party can be satisfied only by satisfying the interest of the other one. It gives rise to the general interest of the parties in concluding a medical insurance contract and, accordingly, its proper implementation. A certain obligation of the insurer corresponds to a certain right of the insured and vice versa.

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