

Legal base for implementation of the principles of rendering medical services to juveniles in the Russian Federation

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Abstract. The article contains analysis of the effective Russian legislation with respect to juveniles at rendering medical services to them, as well as the practice of its application in certain cases. The theoretical research mainly uses two approaches – the complex and problem-oriented ones. Following the results of the carried out analysis, we emphasized the main principles of rendering medical services to juveniles. Some of these principles are the principle of priority, the principle of accessibility and quality of medical aid, the principle of orientation to the personality of a child at his health protection. The article contains interpretation of the "capacity" and "competence" terms with regard to juveniles, determines their special social and legal status. In the course of the research, the author approaches the problem of enjoyment of the rights of juveniles for informed consent to medical intervention. [Sagalaeva E.S., Amvrosova O.N., Gadgieva F.R. **Legal base for implementation of the principles of rendering medical services to juveniles in the Russian Federation.** *Life Sci J* 2014;11(11s):201-203] (ISSN:1097-8135). <http://www.lifesciencesite.com>. 44

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Introduction

The right for protection of the children's health according to the majority of Russian lawmakers is one of the top priority constitutional rights of humans.

The Federal Law of the Russian Federation "On the Basic Principles of Protection of Citizens' Health in the Russian Federation" of 21.11.2011 # 323-Ф3 (hereinafter – the Law on Health Protection) states the priority of protection of children's health as the main and essential condition of their fully-fledged physical and mental development [1].

The main measures guaranteeing state legal support of juvenile in the sphere of protection of their health are: development of medical establishments and their financial and technical provisioning; improvement of the whole healthcare system [2]; regulation of medical standards; determination of budgets for medical servicing related to rendering specialized medical aid; development and approval of state municipal programs of legal guarantees of rendering free medical aid to juveniles including municipal programs of compulsory medical insurance; determination of the order of social support services rendered to certain categories of citizens in the course of rendering medical and social aid [3].

The primary problem hindering development of all types of medical servicing in the sphere of protection of juveniles' health is the crudity of its legal mechanism, and it determines the poor efficiency of the whole system of regulatory protection of the juveniles' rights.

Body of the work

The existing problems of development of all types of medical services to juveniles and the dynamics of the state of children's health in Russia evidence the necessity of improvement of the legislation in the sphere of juveniles' health protection and regulation of the mechanism of rendering medical services to them based on the principles of priority, quality, and accessibility, as well as orientation to the personality of a child.

Let us consider these principles in detail.

1. The principle of priority assumes ensuring priority at rendering medical aid and services to juveniles if compared to adult citizens. According to Article 7 Clause 2 of the Law on Health Protection, "children regardless their family and social well-being are subjects of special protection, ... and have the rights of priority at receiving medical aid" [1]. The legislation formalizes the special social-legal status of a child at passing medical examination, preventive medical examination, measures of medical aftercare, at rendering medical aid and services to the child including the aid during education and parenting at educational institutions, health improvement, organized leisure, medical advising, and obtaining information on the state of health in a form that the child can understand.

The priority of exercising the said rights of juveniles is particularized by the concepts of his capacity and competence.

Capacity means the ability to act as a bearer of civil rights and obligations [4]. And competence means the ability to obtain and exercise civil rights through one's own actions, create obligations for oneself and fulfill them [4]. As a citizen becomes

capable since his birth, everyone has the right for medical aid and can be a patient in a contract for rendering medical services. As for the capacity of juveniles as actors of the civil law, it turns out to be a more complex legal concept than legal personality. Because a juvenile due to his mental and physical abilities cannot fully act as an actor of civil law without support of other persons, it is necessary to ensure the equal status of legal personality of an adult and a child.

The modern Russian legislation states that until a child reaches the age of 18, his interests and rights are exercised by actions of his parents, adopters, foster parents, i.e. legal representatives of juveniles, as well as by the activity of guardianship authorities [5], [6]. Nevertheless, we believe that the assistance of parents and other legal representatives of juveniles in exercising their rights must ensure real participation of children in various types of civil matters, which confirms the possibility of complete enjoyment of capacity by this category of children.

As a result, we can say that practical implementation of the priority principle in the sphere of governmental legal support of juveniles at receiving medical services must be supported by relevant unambiguous determination and delimitation of the "juvenile capacity" and "juvenile competence" concepts and of the cases of assistance of legal representatives of a child at exercising his rights for health protection.

2. The principle of quality and accessibility of medical aid and services for juveniles.

The current law-enforcement practice and legislation use and analyze the principle of quality of medical aid in conjunction with the principle of its accessibility.

According to the opinion of the researchers Yu.T. Sharabchiev and T.V. Dudina, the quality of medical aid is "the interconnection of its characteristics determining the ability of the medical aid to meet the needs of patients based on the standards and regulations of the healthcare system and in conformance with the modern level of medicine" [7]. Accessibility of medical aid is understood here as the actual ability of the population in need to receive necessary medical aid regardless their social status, and the level of well-being and the residence of the citizens. At that, researchers emphasize such criterion of evaluation of the quality and accessibility of medical aid as the possibility of receiving it by various categories of citizens regardless their sociodemographic characteristics.

According to Article 10 of the Law on the Citizens' Health Protection, the accessibility and quality of medical aid can be ensured by the following criteria [1]: proximity of medical

establishments to the population; the number of medical personnel of appropriate level and type of qualification; the possibility of free choice of a medical establishment and a doctor in accordance with the said Federal Law; determination of the order of rendering medical aid and the standards of such aid; etc.

The provided list of criteria of accessibility and quality of medical aid can be supplemented with: ensuring the quality of due compulsory medical insurance of juveniles [8]; ensuring the conformance of medical services to approved standards and modern methods of diagnostics and treatment permitted in the territory of Russia; extension of the list of subsidized medications for disabled children [9]; improvement and facilitation for the disabled children and their parents of the procedures of medical examinations and re-examinations; extension of the range of medical services rendered to juveniles in disputable situations that threaten their lives and health.

3. The principle of orientation to the personality of a child assumes taking into account his opinion at various medical interventions concerning his health, orientation to the needs of the child and the capability of his family in the sphere of exercising the right of the juvenile for protection of his health.

To our opinion, orientation to the personality of a child allows exercising his right for self-determination as related to his health protection, which means the opportunity to take the decision on medical intervention independently and participate in development of the program of his treatment. Such interpretation of the principle obviously assumes participation of the child's legal representatives in the program of aftercare and treatment of the child [10] and detailed explanation of all possible consequences of taking such a decision [11]. The reservation is made with respect to juvenile patients acknowledged incompetent in accordance with an established procedure upon the results of medical examination.

Let us consider an example of exercising the right of a juvenile for taking the decision on medical intervention in law-enforcement practice. According to the provisions of the Federal Law of the Russian Federation "On Prevention of Propagation of the Disease Caused by the Human Immunodeficiency Virus (HIV infection)" of 30.03.1995 # 38-FZ, the "compulsory consent of legal representatives for medical examination targeting detection of the HIV infection is only required with respect to citizens under 14 years of age" [12]. Other provisions worth mentioning are the provisions of the Federal Law of the Russian Federation "On Prevention of Propagation of Tuberculosis in the Russian

Federation” of 18.06.2001 # 77-FZ, in which similar rules for juvenile patients are formalized [13].

Comparison of the two documents and determination of their conformance to the provisions of the Law on Health Protection showed that the special law, if compared to the general law, does not require consent of parents (other legal representatives) for rendering medical aid to a child who is between 14 and 15 years old.

According to the basic concepts of the law theory, in case of such contradiction, the priority must be put on special statutory acts. However, it is not quite clear what was the cause for this exclusion from the general rule. Probably, such standards are conditioned by the specific nature of social relations, which are subject to statutory regulation. Nevertheless, the provisions of the said laws concerning rendering certain types of medical aid must not have any deviations from the provisions of the general statutory act in this sphere.

Summary

Summarizing the above-said, we are able to conclude the following:

The efficiency of the state legal support in the sphere of protection of juveniles' health depends on both rational organization of the healthcare system and the extent of regulatory solution of issues determining the possibility of receiving high quality medical aid and services by children. Such issues include development of an effective mechanism of legal support of juveniles in the sphere of their health protection based on the principles of priority, quality, and accessibility of medical aid and services as well as orientation to the personality of a child.

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