

УДК 341

## LEGAL REGULATION OF INTERNATIONAL MEDICAL TOURISM IN THE ERA OF DIGITAL TECHNOLOGY

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The article examines the impact of informational technologies on the legal regulation of international medical tourism. The possibility of using a block chain and smart contracts for the provision of medical services in the framework of inbound tourism and the implementation of compulsory medical insurance of foreigners are the novelties suggested by the author that can enhance the competitive advantage of the Republic of Belarus in the development of international medical tourism. Informatization of the healthcare sphere positively influences the export of medical services and the formation of a single digital market.

**Key words:** international medical tourism; medical services; compulsory medical insurance of foreigners; blockchain; smart contract; single digital market; international private law.

## ПРАВОВОЕ РЕГУЛИРОВАНИЕ МЕЖДУНАРОДНОГО МЕДИЦИНСКОГО ТУРИЗМА В ЭПОХУ ЦИФРОВЫХ ТЕХНОЛОГИЙ

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Рассмотрено влияние информационных технологий на правовое регулирование международного медицинского туризма. В целях увеличения преимущества Республики Беларусь в развитии международного медицинского туризма предлагается использовать блокчейн и смарт-контракт для оказания медицинских услуг в рамках въездного

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### Образец цитирования:

Анцух НС. Правовое регулирование международного медицинского туризма в эпоху цифровых технологий. *Журнал Белорусского государственного университета. Международные отношения.* 2018;1:35–40 (на англ.).

### For citation:

Antsukh NS. Legal regulation of international medical tourism in the era of digital technology. *Journal of the Belarusian State University. International Relations.* 2018;1: 35–40.

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туризма и осуществления обязательного медицинского страхования иностранцев. Информатизация сферы здравоохранения положительно воздействует на экспорт медицинских услуг и формирование единого цифрового рынка.

**Ключевые слова:** международный медицинский туризм; медицинские услуги; обязательное медицинское страхование иностранцев; блокчейн; смарт-контракт; единый цифровой рынок; международное частное право.

The Republic of Belarus is a state with a highly developed healthcare system, which allows to follow the latest world trends in this area, among which is international medical tourism. The provision of medical services using IT in conditions of sustainable development of the information society is a new trend that correlates with the innovative development of the national economy. To date, in Belarus, the legal regulation of international medical tourism, including the possibility of using digital technologies in this area, is in the stage of formation. Approved on 13 December 2017 at the II Congress of Scientists of the Republic of Belarus, the Strategy “Science and Technology: 2018–2040” [1], and adopted on 21 December 2017 the Decree of the President of the Republic of Belarus No. 8 “On the Development of the Digital Economy” [2] set a direction for solving a number of strategic tasks.

In the Belarusian doctrine, this topic has been studied fragmentarily, which is primarily due to its novelty. Certain aspects of the legal regulation of international medical tourism have been reflected in the works of a number of Belarusian authors, such as I. N. Yakhnovets [3], V. E. Androsov [4], while the normative and legal consolidation of the possibility of using information and communication technologies in this area is mainly reflected in foreign doctrine. The purpose of this article is to determine the state and prospects of the legal regulation of the Republic of Belarus in the field of international medical tourism, taking into account current trends in the development of digitalization and the establishment of a digital society.

The Law of the Republic of Belarus of 25 November 1999 No. 326-3 “On Tourism” [5], Article 3, defines international tourism (outbound and inbound) as an organizational form of tourism. The features of the organization of certain types of tourism, the list of which in this law is open, are regulated by the current legislation. It is believed that medical tourism can be attributed to a separate type of tourism, different from health and recreational tourism. To date, Belarusian legislation lacks a clear classification of the types of tourism, which leads to their confusion and further difficulties in determining the essential terms of the contract for the provision of tourist services, to which the rules established by law for a contract for fee-based provision of services (Chapter 39 of the Civil Code of the Republic of Belarus of 7 December 1998, No. 218-3[6]) are applied.

Becoming more and more popular are the tourist trips related to the rendering of fee-based medical services to foreign citizens and stateless persons, except

for those permanently residing in the Republic of Belarus, within the territory of the Republic of Belarus. Given this fact, this article focuses on the legal regulation of the export of medical services, i. e. foreign trade in medical services through the provision of services by Belarusian executives to foreign customers.

In order to develop inbound medical tourism in the Republic of Belarus and improve the quality of services provided by health organizations to foreign citizens, a number of acts have been adopted, among them are the order of the Ministry of Health of the Republic of Belarus of 16 July 2010 No. 752 “On the Organization of Export of Medical Services” [7] and the order of the Ministry of Health of the Republic of Belarus of 25 August 2011 No. 843 “On the Development of Export of Medical Services” [8]. In pursuance of these normative legal acts, the healthcare organizations have developed a strategy for the development of service export based on the results of marketing research conducted on the foreign healthcare market, identified medical personnel from the officials responsible for organizing the export of medical services, delivered the order (logistics) of the medical services provided to foreign patients from the time they enter a healthcare organization to the moment of their discharge or transfer to other health organizations. According to the general rule set forth in article 13 of the Law of the Republic of Belarus of 4 January 2010 No. 105-3 “On the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus” [9], article 5 of the Law of the Republic of Belarus of 18 June 1993, No. 2435-XII “On Health Care” [10], foreign citizens and stateless persons temporarily staying or temporarily residing in the Republic of Belarus are entitled to affordable healthcare on a fee-paying basis. Others can be established by legislative acts and international treaties.

The modern possibilities of using information and communication technologies in the field of medicine, which relate to the creation of an “e-health” system, including the introduction of electronic medical records and the development of telemedicine, should also be effectively used for international medical tourism.

On 28 March 2018 the Decree of the President of the Republic of Belarus No. 8 “On the Development of the Digital Economy” comes into force, the norms of which provide for the implementation of activities using the technology of the transaction block register (blockchain). In global practice, the healthcare blockchain is already used to store patient’s electronic medical records, which facilitates access by medical

workers from various institutions to the patients' data. The introduction of this technology improves the quality of treatment and minimizes its cost. A doctor can quickly learn the necessary information about a patient: blood group, allergic reactions, chronic diseases, tests data, and appointments, regardless of whether the patient was receiving medical care in a public or private health organization. Using this technology within integration associations is certainly relevant given the development of international medical tourism and the formation of a single digital market.

In the Republic of Belarus, pursuant to the Loan Agreement (Project "Modernization of the Healthcare System of the Republic of Belarus") [11], concluded with the International Bank for Reconstruction and Development on 25 November 2016, it is planned to introduce electronic medical records for the formation and maintenance of a single patient information archive and immediate provision of medical data.

In connection with realization of the Project "Modernization of the Healthcare System of the Republic of Belarus" and possibility of using electronic medical records, the protection of personal medical data becomes especially urgent. In Belarus, the general provisions of this aspect are contained in a number of normative legal acts, among which are the Law of the Republic of Belarus of 21 July 2008 No. 418-3 "On the Population Register" [12], and the Law of the Republic of Belarus of 10 November 2008 No. 455-3 "On Information, Informatization and Information Protection" [13].

The plan for drafting bills for 2018, approved by the Edict of the President of the Republic of Belarus, of 10 January 2018, No. 9 [14], provides for the development of the draft law of the Republic of Belarus "On Personal Data", whose main idea is to find a reasonable balance between protecting personal data, development of information technologies and the need to fulfil state functions [15].

It is advisable to develop a mechanism for processing personal medical data in the e-health system. In global practice, there are two variants of the development of events: obtaining the patient's prior voluntary informed consent to such actions or his presumed consent with the possibility of registering a refusal of digital processing of personal medical data with subsequent entering of the will in the register containing the relevant information on dissenting persons for processing data information and communication technologies. For example, a patient may object to his personal medical data being entered into electronic medical records. It should also be determined how individual groups of the population, in particular minors and legally incapacitated citizens, can realize the right of refusal. To ensure the security of information systems and guarantee the protection of personal medical data, it is necessary to determine the range of subjects involved in the processing of personal medical

data through information and communication technologies. This is due to the fact that not only medical personnel, whose duty is to preserve medical confidentiality, but also other persons (for example, the Internet and hosting providers, cloud service operators) are involved in this process. The issue of the possible use of electronic personal medical data for scientific research and the implementation of state statistical activities (with anonymity of the patient) should also be addressed.

An interesting innovation is the use of smart contracts in the field of health care services. According to Clause 9 of Appendix 1 to the Decree of the President of the Republic of Belarus No. 8 "On the Development of the Digital Economy", a smart contract is a program code intended for functioning in the transaction block registry (a blockchain), or another distributed information system for the purpose of automated execution and (or) execution transactions or committing other legally significant actions. The content of a smart contract represents a description of the conditions for its execution. In the healthcare sector, smart contracts can be used to implement health insurance programs or monitor the treatment of patients when providing medical services by using information and communication technologies. When implementing the above mentioned in practice, it is necessary to consider the provisions of the current Belarusian legislation with respect to the electronic document and electronic digital signature, and first of all the norms of the Law of the Republic of Belarus of 28 December 2009 No. 113-3 "On the Electronic Document and Electronic Digital Signature" [16].

Article 13 of the Law of the Republic of Belarus of 4 January 2010 No. 105-3 "On the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus" states that the procedure and conditions for compulsory medical insurance for foreigners temporarily staying and temporarily residing in the Republic of Belarus are determined by the legislative acts of the Republic of Belarus. According to Chapter 15 of the Edict of the President of the Republic of Belarus of 25 August 2006 No. 530 "On Insurance Activity" [17], foreign citizens and stateless persons temporarily staying or temporarily residing in the Republic of Belarus must have a compulsory health insurance contract or a health insurance agreement, concluded with a foreign insurance organization, in the event that medical institutions provide emergency medical care. The implementation of international inbound medical tourism is impossible without compulsory insurance of a foreigner's health due to a sudden illness or accident. The use of a blockchain and smart contract technologies ensures the transfer of information on the existence of an insurance policy or a document that confirms the existence of a health insurance agreement in the form of a code that indicates the algorithm for payment of insurance compensation. However, there may be

a risk of a personal medical data breach in the case of the use of blockchain technology between commercial insurance organizations and healthcare institutions controlled by the Ministry of Health, i. e. state body. To prevent this problem, it is advisable to develop an appropriate legal regulation and make changes to the Edict of the President of the Republic of Belarus “On Insurance Activities”. The development of telemedicine is a new direction in healthcare. In Russia, for example, the legal basis for the implementation of this technology arose due to the introduction on 29 July 2017 of changes in the application of information technology in the field of health care in the Federal Law of 21 November 2011 No. 323-ФЗ “On the Fundamentals of Health Care of Citizens in the Russian Federation” [18]. From 1 January 2018 in Russia, it became possible to provide remote consulting and diagnostic medical services, which opens up new horizons for international medical tourism. a patient and a doctor may be situated in different states, but the use of blockchain technology and a smart contract minimizes the risk of rendering poor-quality medical services. Payment will be made only after the treatment protocols are implemented, i. e. in the case of the provision of high-quality medical care. Blockchain keeps confidentiality and security of the messaging system, and the smart contract technology helps to ensure authenticity and identification of participants. The Decree of the President of the Republic of Belarus No. 8 “On the Development of the Digital Economy” created the conditions for the introduction of smart contracts. After the approbation of a new legal institution, it is expedient to interpret its action into the civil law by developing provisions on a smart contract in the Civil Code of the Republic of Belarus.

The provision of medical services in Belarus with the use of telemedicine has not been regulated by law. However, within the framework of the CIS, a number of documents have been adopted on the issues of digitalization of medicine: the Strategy of Cooperation of the CIS Countries in the Field of Informatization of 24 November 2006 [19]; the Memorandum on Cooperation of the CIS Member States in the Development of Compa-

tible National Telemedicine Consulting and Diagnostic Systems of 14 November 2008 [20]; the Agreement on Cooperation in the Creation of Compatible National Telemedicine Systems and their Further Development and Use in the CIS Member States of 19 November 2010 [21]; and the Model Law of 28 October 2010 “On Telemedicine Services” [22]. On 11 October 2017, the session of the Supreme Eurasian Economic Council of the EAEU took place, at which the digital agenda of the EAEU until 2025 was discussed. The review of a joint research of the World Bank and the Eurasian Economic Commission “The Digital Agenda of the EAEU 2025: Prospects and Recommendations” [23], indicates the necessity to create harmonized legislation and a regulatory framework for the Union integration and the implementation of digital transformation. One of the main directions of the EAEU digital space creation is the digitization of the leading sectors of the economy. In paragraph 1.4 of the draft of Strategic Directions for the Formation and Development of the Digital Space of the EAEU in 2025 Perspective [24], the emphasis is also placed on the fact that one of the trends of digital transformation is cross-sectoral changes, which also includes healthcare.

Information technology affects various areas of the economy, and healthcare is no exception. Competent use of innovative ideas, established in Presidential Decree No. 8 “On the Development of Digital Economy”, in conjunction with new trends in the digitalization of medicine, including the introduction of the “e-health” system and raising the question of the need for legal regulation of telemedicine, will have a positive impact on the development of the information society. The use of blockchain technology and a smart contract for the provision of medical services in the framework of inbound tourism and the implementation of compulsory medical insurance for foreigners are the innovations that can enhance the competitive advantage of the Republic of Belarus in the development of international medical tourism. Informatization of the healthcare sphere positively influences the export of medical services and the formation of a single digital market.

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Received by editorial board 02.03.2018.