



**ADVANTAGES AND DISADVANTAGES OF PRIVATIZATION OF HEALTH  
INSURANCE**

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# Abstract

The following thesis is aimed to research the issue of advantages and disadvantages of privatization of health insurance. The following topic is highly debated nowadays in most countries, and each one of them has its own pattern of health care and health insurance. This paper goes over 4 existing health insurance patterns (the ones in United States of America, Germany, Ukraine and Belarus). These countries are chosen for clear distinction their systems have. The paper points out its advantages and disadvantages.

Further it draws the attention of the reader to some significant debates in health insurance and health care spheres. These are debate on whether right to health is contractual or human right, debate on the distinction between terms 'medical treatment' and 'medical service'. It also points out the problem of state health insurance (or state funded health care) vs. private health insurance. There the problems of Quality vs. Availability and Good and Bad Risks are raised.

The paper also significantly points out the recommendations made by Professor Janos Kornai for Hungarian health care reform. The author makes analysis of these recommendations and provides his own thoughts concerning the issue stating that only co-existence of private health insurance and state health insurance (or even state health care) can be considered optimal and acceptable for all. However, a clear distinction between basic treatment and auxiliary medical services has to be made. That way a balanced system would be formed.

# Introduction

Health insurance did not appear yesterday. As sources say, “health insurance existed in Ancient Greece and Rome. It was administered by special assistance organizations attached to professional unions which conducted all collection and distribution of the costs in cases of injury, long term disease etc. Health insurance also existed in Middle Ages, and was one of the concerns of trade unions and the church. However clearly health insurance organizations were formed in 19<sup>th</sup> century in European countries when special hospital pay-offices<sup>1</sup> were formed.”<sup>2</sup> That was the start of its development. Later on health insurance developed both in a profitable business and a social issue. It is being debated in most countries of the world. Many politicians got to power due to their health insurance reforms attempts (the most recent example is U.S. President Barack Obama). However, the world still suffers from diseases. People suffer either from poor quality of health care treatment or inability to get expensive health care services in countries where private health care is on the peak of its development. No acceptable solution is proposed nowadays. Most usually these solutions are not accepted for political reasons, however.

This paper will try to examine the existing patterns of health care and specifically health insurance regulations in the United States of America, Federal Republic of Germany, Ukraine and The Republic of Belarus. It will examine advantages and disadvantages of each one of them. These countries are chosen because of significant differences they have in their health care and health insurance policy, and their comparison would most certainly bring some result in this research. It will also go over some recent debates on the issues connected to health insurance, and at the end it will try to develop its own optimal health insurance system, and offer it to public debate should one arise.

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1 My translation of Russian “касса” [kassa]

2 Tatyana A. Fedorova, *Strahovanie (Insurance)* 416 (Magistr 2008)

Health insurance is very important component of the existence of each society. It is important for the state not only to realize the consequences of its policy in this sphere. The society and all of its members need to be acquainted with it, and feel themselves secure. However what is the best condition for that: private health insurance, state health insurance or state health care system their advantages and disadvantages – that is what the paper is about.

# 1. Overview of different health insurance patterns

## **1.1. Health insurance in the United States of America**

United States of America is usually viewed as the country of free market relations. One of the main principles this country was built on is respect to individual freedom. This also, however, includes individual responsibility for everything a person does. Unlike many other countries, where state takes very active part in solving ones individual problems, United States only provide possibilities to its citizens to protect their rights. By doing that they apply a principle of equality of the parties, and unlike European or some Asian countries they do not provide nothing like a presumption of liability of the stronger party (as European Union legislation provides in consumer cases or some countries of former Soviet Union provide in cases versus public authorities) or any other regulation which would provide initial benefits to one party. In United States people take responsibility for all their steps, and not only wish it to be respected by others but also consider it to be one of the greatest values of American society.

Health care system in the United States (and Health insurance system, as well) reflect just that type of attitude. USA (unlike many other countries) has no state funded health care. Moreover, it does not have any state insurance programs obligatory for every one that many other countries in the world have. However, some governmental programs do exist in this sphere.<sup>3</sup> A person in the United States has a wide variety of choices, however they have to be affordable for him/her (which is not always the case, however).

Since the country does not have a state funded health care system (except for some spheres like military, for example), medical treatment and medical services are funded either by patients right away, or by different insurance plans provided by a wide variety of insurance

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<sup>3</sup> Medicare and Medicaid to name a few.

companies. Citizens, though, have a big choice of companies and insurance plans they offer. Some of them chose to buy these plans on their own. Some get them bought by their employers which usually buy insurance plans or programs for groups of people most often for a discounted price.

A small amount of people (elderly, poor, military, veterans etc.) are also entitled to some governmental programs on federal and state level. The most famous of those programs are Medicare (provides care to elderly people), and Medicaid (provides care to poor people, unable to pay for their treatment). One state (Massachusetts) has adopted a universal health care system in 2006. It requires all Massachusetts residents to obtain an insurance plan, while it also provides discounted plan offers, and also has established a fund to provide care for those unable to pay for their medical treatment.<sup>4</sup> Some municipalities also have their own programs on local level (San Francisco, California).<sup>5</sup>

Health insurance sphere is governed by a number of federal laws, the most significant of which are the Emergency Medical Treatment and Active Labor Act (providing requirement for medical institutions (hospitals, ambulances etc.) to provide emergency care to any person not taking into account their residency or citizenship. This possibility is also widely used by the uninsured people, and results in overcrowded emergency rooms, which is considered to be a negative outcome of U.S. health care system.

Another bill regulating health care and health insurance issues is Consolidated Omnibus Budget Reconciliation Act. This law came into force in 1986. It's most significant feature is Title X that requires an employer having 20 or more full time employees (so called 'qualifying employer') to make sure that the health insurance plan he offers his employees gives them and their immediate family members who had been covered by a health care plan

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4 Mitt Romney, *Health care for everyone? We've found a way*, The Wall Street Journal Digital Network (2006) \*10:09, available at <http://www.opinionjournal.com/editorial/feature.html?id=110008213>

5 Laura A. Locke, *San Francisco's latest innovation: Universal Health care*, Time CNN (2006) \*10:12, available at <http://www.time.com/time/nation/article/0,8599,1207599,00.html>

a “possibility to maintain their coverage if a “qualifying event” causes them to lose it.”<sup>6</sup> 4 of the 6 "qualifying events" listed in the statute are: “loss of benefits coverage due to (1) the death of the covered employee; (2) an employee loses eligibility for coverage due to termination or a reduction in hours as a result of resignation, discharge, layoff, strike or lockout, medical leave, or slowdown in business operations; (3) divorce or legal separation that terminates the ex-spouse's eligibility for benefits; or (4) a dependent child reaching the age at which he or she is no longer covered.”<sup>7</sup>

The other remarkable statute in health insurance sphere is Health Insurance Portability and Accountability Act. This bill regulates the availability and breadth of group insurance plans, and some individual plans. The law provides limits to restrictions in a group health insurance plans (that they usually put on people having preexisting conditions). These restrictions are limited to a period of 12 months after enrollment in the plan or 18 months in the case of late enrollment.

Health care system in the United States is a highly debated political issue nowadays. President Barack Obama has promised in his numerous speeches to form a universal coverage health care system in the United States till the end of his first term.<sup>8</sup> There are both supporters and opponents of this initiative, both having a wide range of important arguments. This raises the issue on agenda, and provides soil for experiments.

Some steps towards it are already taken. A new bill, called United States National Health Insurance Act is introduced into the House of Representatives of the American Congress. This bill requires free health care provision in the United States to every resident.

However, opponents of this new law have a great number of arguments, some of them to be that this would not motivate health care system for innovations (while one of President's

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6 Consolidated Omnibus Budget Reconciliation Act, 29 U.S.C.A § 1161 (1997)

7 Ibid, §1163

8 *Obama promises universal health care by the end of first term*, Chicago Sun-Times (2007) \*10:51, available at <http://www.suntimes.com/news/elections/385287,051407obama.article>

initiatives is also to eliminate patent protection for drugs), would be simply too expensive to afford for the federal and state budgets, and will cause long waiting lists in order to get to the doctor, and as a result – bribery.

Supporters claim that they don't want to eliminate private health care, and it will co-exist with the state supported, which will provide people choice.

So United States health system is completely individualistic (with a few exceptions). The person is not secure there from not being able to afford to pay for medical services. President Obama's initiative aims to try to help solve that problem, however I'm not sure whether it is completely possible in the country like the United States where personal freedom means very much.

## **1.2. Health insurance in Germany**

Germany is one of the European countries, which is often regarded as a “miracle”. Not only because of its economic successes (and it is truly viewed today as economic heart of Europe). It is also very famous for its high social standards, high level of social security, and has at the same time very good quality of health care.

Germans have always been building its nation on pragmatic values. It would not be possible otherwise to unite a great number of German mini-states into one great nation that not only suffered two world wars (having lost in both) but also succeeded successfully not only to rebuild itself but to become a leader in the region. German pragmatic way of thinking does not differ much from American way in the issues concerning individualistic approach. However, Germans take into account the probability of possible becoming a weaker party, and protect themselves accordingly.

Germany has 2 separate systems of health insurance: public health insurance (Gesetzliche Krankenversicherung) and private health insurance (Private Krankenversicherung).

All employees are obliged to have a public health insurance. However, there are categories that may join the private health insurance system instead of the public one. These are: public officials, entrepreneurs, and employees whose gross income exceeds ca. 50 000 EUR (adjusted yearly).

Public health insurance system is mostly regulated by German Social Law (Sozialgesetzbuch).<sup>9</sup> It provides that the premium is set by the Ministry of Health based on a fixed set of covered services, specifically “economically viable, sufficient, necessary and meaningful services”<sup>10</sup>

Moreover, premiums are not dependent on the health condition of an individual. They make up a percentage the income (usually salary). Half of it is paid by the employer. It is

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9 *Sozialgesetzbuch* (2004) \* 11:01 available at <http://www.sozialgesetzbuch.de/gesetze/index.php>

10 Ibid, Book 4 § 11

also important to note that family members of any registered member are included.

The weak part of this system is that it does not permit savings for individuals for future higher health care costs due to rising age. This means that working young generations need to take care of the elderly which outnumber the young. That can create a huge problem in public health insurance system.

Private health insurance system is very much alike with the one in the United States, where the premium is based on an agreement between the insurance company and an individual, and includes all the necessary provisions (e.g. set of covered services, premiums etc.). Private health insurance system can be used for future savings.

As recent reviews show<sup>11</sup>, most Germans are satisfied with their health care system that provides them with plenty of possibilities to chose a doctor, and to receive a highly qualified treatment. Germans are usually highly demanding, and health care system is of no exception. They are known of often changing doctors and having a very extensive so called “neighborhood database” of local doctors' performance.

German health insurance system while combining features of both state and private is an effective way of solving the problem of adequate health care system formation. However, it is also very much dependent on the amount of working young people being able to subsidize elderly ones. Due to recent demographics, this amount constantly decreases, which means that new problems will arise in the future. These would be either further reforms or simply rise in premiums (which would certainly not get support from the working part of German society).

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11 David G. Green, Benedict Irvine, *Health care in France and Germany: Lessons for the U.K.* (2008) Civitas: Institute for civil society, London (2001)

### **1.3. Health insurance in Ukraine**

Ukraine is undergoing a stage of reforms nowadays. It concerns not only health care system, however most of other spheres as well. These reforms are aimed at building a state with market economy based on the principles of democracy, rule of law, and human rights. Ukrainian Constitution refers to Ukraine as “independent, sovereign, democratic, social state recognizing rule of law”<sup>12</sup>. Moreover, Article 14 of the Constitution gives every one residing on Ukrainian territory the right for free health care, which is funded by the state. This means that Ukraine has free health care, and every citizen and legal resident is entitled to it. As for emergency care, it is provided for free to everyone regardless of citizenship.

These provisions are left from the times of Soviet Union, and it doesn't seem that they are going to be changed in the nearest future. However, being very progressive, and socially oriented, this system has its own negative sides. Mostly they concern quality of care and access to it. Constant under financing of health care results in tremendous loss of quality of medical services. Not only the equipment is old (usually still Soviet built), but also no highly qualified specialists wish to work in state or municipally run medical institutions. Those who do usually turn to bribery, and people in 18 years of independence have already used to that. This has a lot of negative impact. Not only that bribery is a criminal offense by both sides, it does not guarantee the required level of services, and people cannot usually control what is done to them by medical practitioners who received “gratuities” from them. It's also worth mentioning that no income taxes are paid from bribes.

Besides public health care, the Law of Ukraine “On Insurance” adopted on March 7, 1996 and the Law of Ukraine “On Health Care” adopted on November 19, 1992 permit also private health care in Ukraine. A lot of doctors started their private practice (either jointly or individually). However, these mostly include highly demanded and paid professionals such as dentists, cosmetologists, gynecologists, dermatologists. However, you would not see a

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<sup>12</sup> Constitution art. 1 (Ukraine)

private phthisiologist or gerontologist anywhere.

Private health care is usually paid out of pocket by the patients, however private health insurance also exists. This system is not very well developed, and usually has the same problems U.S. health insurance system does (e.g. insurance provider would not cover any costs paid by the patient if he or she did not inform the insurance company in advance, and visited a doctor not on company's list etc.). Since court system is also very slow and highly corrupt, people don't find it effective to turn to the courts to help solve such problems. They, however, find it more efficient and easier to bribe doctors from state or municipal medical institutions, and hope that everything will be fine.

So, Ukrainian health care and health insurance system is currently being rebuilt. There are many politicians pursuing the development of private health care only system (using United States as the example). Their main argument is that people still pay doctors no matter what. Should they succeed (which is unlikely, while Constitution has to be amended in order to pursue those changes), the new problems would arise (something what United States is experiencing now, and what is described above). Considering the level of the overall development of Ukraine, and especially of its court system, that would be a disaster...

#### **1.4. Health insurance in Belarus**

Belarus is one of the countries of former Soviet Union which is believed to have kept most of what Soviet Union was known for. It includes a number of advantages in social security system. One of its most significant features is free health care system, access to which is guaranteed to every citizen of the Republic of Belarus by Article 45 of the Constitution.<sup>13</sup>

Law of the Republic of Belarus “On health care” adopted on June 18, 1993 provides a more detailed regulation of health care system. It copies constitutional provisions concerning access to free health care in state medical institutions by Belorussian citizens, and applies also this right to permanent residents – foreign citizens (Articles 4 and 5 of the Law). Same articles provide also the possibility to get medical services on pay-out-of-pocket basis. However, foreign citizens with temporary residence on the territory of the Republic of Belarus do not have access to free health care system, and can get medical services if they pay for them.<sup>14</sup> Belorussian legislation (primarily the Decree of the President of the Republic of Belarus “On insurance activity” adopted on August 25, 2006 # 530) provides regulations of health insurance activity. Except for obliging foreign citizens to obtain health insurance in order to enter the territory of the Republic of Belarus, this document also provides regulations of “additional costs health insurance”<sup>15</sup>. It applies to everyone, who wishes to get additional medical services or does not want to turn to free health care system institution, and does not want to pay for the services of private institution out of pocket.

Decree also provides detailed regulation of obligatory health insurance for foreigners entering the territory of the Republic of Belarus. Among all, it provides possibilities to conclude contracts either with Belorussian or with a foreign insurance company, states main provisions the contract has to include (e.g. minimal insurance liability sum – 5 000 USD, exact period of

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13 Constitution art. 45 (Belarus)

14 However, health insurance is obligatory for foreign citizens entering the territory of the Republic of Belarus according to Sub para. 4.1 of Para. 4 of the Decree of President of the Republic of Belarus “On insurance activity” adopted on August 25, 2006 # 530

15 Term as being used by the Decree

being in force – the whole period of location of the foreign citizen on the territory of the Republic of Belarus, exact insurance cases stated in Para. 206 of the Decree etc.).

Except all that, the Decree provides also regulations concerning the insurance companies management. According to Para. 7 of the Decree only citizens of the Republic of Belarus or permanent residents can obtain positions of Manager, Deputy Manager, and Head Accountant of insurance companies. Moreover, their job contracts have to be approved by the Ministry of Finance of the Republic of Belarus.

So, Belorussian health insurance system is quite different from U.S., German and Ukrainian systems. Free health care system is not insurance based. It is funded from state budget, however. The existence of private health care institutions was the reason of emergence of private health care. However, it is not very popular, while most people use state guaranteed free health care, which has a good quality. However, this good quality is being preserved mostly not by market mechanisms but because of state control over health care system.

## 2. Right to health

### 2.1. *Right to health: human right or contractual right?*

A debate over qualification of right to health as human right or as a contractual right is very up to date. Answer to that hard question should help resolve another big problem: whether the state has an obligation to provide free health care (either budget based or insurance based) to its citizens or it is citizens' obligation to fund their own health care. I am not the first one to touch this problem, however the acceptable answer is still not yet found. I'll try to find it in this paper.

One cannot doubt that right to life is indigenous human right recognized by all civilized nations. This provision is included in most international conventions (Universal Declaration of Human Rights of 1948, International Covenant on Civil and Political Rights of 1966, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 etc.). It is also included in most state constitutions, and is nowadays generally not doubted.

Moreover, most constitutions include also now the provision concerning the right of person to an acceptable level of life.<sup>16</sup> It is worth pointing out that person's health is an element of the acceptable level of life.

If it is so, then this element has to be protected same as the whole right to life is protected. However, a new question arises whether it is so? Here we have to turn to definitions. This is not easy, however.

The world still does not have a common definition of the term “right”. Here scholars are still split into two main theories: positive law, and natural law.<sup>17</sup> First group of scholars views law as a certain number of rules that state adopts in order to regulate social relations. The other group views it more as possibilities an individual naturally has just because he is a human being. Difference in these views applies directly to the debate on whether right to

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16 E.g. Constitution art. 48 (Ukraine)

17 See: Sergey Alekseyev *Obschaya teoriya prava* (General Theory of Law) 72-83 (Prospekt 2008)

health is a human right or contractual right. If we take the first definition, then we would most certainly end up with right to health as a contractual right, while state may just grant this right to its citizens through its legislation and take it away. On the other hand, right to health can be viewed as a natural human right by the ones who adopted natural law principles. That way, a state cannot grant that right, but has to guarantee it.

No matter which approach we adopt in this case, both of them have positive and negative sides.

Right to health as a contractual right does provide possibilities to chose a place where treatment (or even a service in this case) will be provided. It also provides a patient with legal possibility to claim damages in case of any malpractice (like any other contract, medical services contract can be enforced in the court). These are obvious positive sides of right to health being considered as a contractual right. However, there are some that require further description in order to be considered. The most significant of them is its positive social role. I do not want to debate with those, who would try to persuade me that the described view of the right to health cannot have a positive social role. It rather has negative role in the society. However, it is both true and false.

Every person knowing that once he or she gets ill, and would require medical treatment gets it under any circumstances is that goal each health care system (regardless of the view on right to health) is constantly trying to achieve. However, it is not possible under any of those. Concerning the view of right to health as a contractual right the reason would simply be an inability to conclude a contract in order to obtain that right. There may be many different reasons (e.g. lack of offers, lack of finances, incapacity etc.). However, such view has a very strong mental effect. It makes people rely only on themselves, which is positive for the society to my mind. Society of intelligent people who know that they are not secure unless they provide their own security is a strong society when consists of responsible members.

However, it is usually not the case.

All societies consist of various members. Each member has different qualities. Moreover, each member has different values. Some of them are not as lucky as the others, and for different reasons they have to suffer from different disasters. Injuries, invalidity, poor health conditions may be some of those. Should we have applied the above mentioned pattern, not only would we not preserve human life which is considered to be the greatest value under most world constitutions and international documents. We would have also lost many talented personalities (like Ludwig van Beethoven or Franklin D. Roosevelt, to name a few of them), who would otherwise not have the possibility to use their talents for the benefit of the society. That is the reason the society elects government in order to ensure that none of those above mentioned is forgotten, and everyone has possibilities for his or her own development. For that reason people pay taxes, elect and get elected. However, this is only one side of the medal.

View of right to health as a contractual right creates a clearly individualistic approach. It is very similar to the natural approach which is used in animal world, where every individual is responsible only for him/herself, and sometimes for the children up to certain moment (and also not in every case). But even in animal world collectivism is present. A lot of representatives of animal world are famous for their collectivity (e.g. ants, termites, honeybees, piranhas). Right to health on the other side is among those values that differ humans from animals.

Right to health can be viewed also as a human right. This approach is present in many international documents and also in the legislation of many states. It also has its positive and negative sides that differ depending on what theory of the definition of the term 'right' is applied (positivist theory or the theory of natural law).

From the point of view of natural law, the person has this right just because he or she

is a human being. The state has the obligation to provide protection of that right. This point of view seeming very human and socially oriented has however, its problems too. Every right has to be protected by the state. However, different rights have different levels of state involvement in their protection. Some simply need to have special legislation and effective administrative and court system. Others require additional costs from the state in order to be provided. Right to health is clearly among the latter. In order to ensure someone's right to health human involvement is necessary. Contrary to the other rights, where one can just rely on its existence, and exercise it, it is not always possible to exercise right to health without the involvement of medical staff (except for completely healthy people). This medical staff has to be provided with everything necessary for treatment. And in this case state is the one who provides all that. However, that also requires people to pay usually high taxes or participate in state social programs (like the ones in Germany). The problem here arises when for some reason the state cannot provide all the resources medical institutions need for treatment of their patients. On one hand, the state cannot violate the human right, on the other it simply has no resources in order to do that. That is a big problem, while even having reasonable political consequences for the government, this does not solve the problem of people getting medical treatment.

The positivist point of view is mostly the same. Right to health is still a right, and it is protected by the state, however there are two important differences from the previous point of view. Under positivist theory rights can be granted and withdrawn by the state. The state makes choices among possible rights and grants only those, which it is able to protect. This is clearly positive for the state, however, it makes citizens very dependent from state bodies, eliminates the right to choose an acceptable level of quality, does not provide clear possibilities to object in case of malpractice (except for filing a complaint that could possibly be considered by the authorities). This does eliminate individual rights and responsibilities to

my mind. However, this approach makes stress on collective rights, and puts group rights above the rights of every individual.

There are also positive and negative sides of such approach. Positive is that this view brings sureness. People are sure that no matter what, they will be treated, and no one would ask them either for insurance or to pay for the treatment. They could be asked whether they belong to the district served by that medical institution, however. Positive side of this model is also its dwelling on collective rights. This system helps ensure that society as a whole has an acceptable level of health, however not all the services may be of a very high quality.

Acceptable level of health in the society means that it is not weak, and is able to achieve some global goals or solve some global problems it is facing. This would be less possible in the society viewing right to health as a contractual right. In that case global goals and global problems are usually not even thought about, while they are not in the contract.

## **2.2. Debate: medical treatment or medical services**

Distinction between terms 'medical treatment' and 'medical services' has clear link to right to health as human or contractual right debate. It is more common to use the term 'medical treatment' when referred to right to health as a human right, and to use the term 'medical services' when referred to right to health as a contractual right. Treatment is something you get regardless of having a contract or not. Treatment is considered to be a social category, while service is clearly an economic one. I recently came over an interesting discussion on the Internet concerning health care.<sup>18</sup> The debate went over Prof. Dainbridge's point that health care is not a right at all. The auditorium was mostly American (as I could define), and the thoughts represented there are more than interesting. Except for great struggle for individual freedom, and right to make choices (which are clearly American values), some commentators pointed that health care cannot be considered a right because by providing this right one takes rights of others (like property rights, for example). Moreover, commentators state that since by medical treatment one takes the rights of others, it has to be considered a service, while treatment is just something you get free of charge.

It is clearly not a scholarly dispute even because scholars do understand that if some right affects another right it does not stop being a right just because of that. A famous saying about the freedom of one ending there, where the freedom of the other starts applies here. However, what is interesting is that this small Internet debate shows a clear American approach to health care (at least the approach of American commentators). They view health care as simple contractual service that can be, is, will be, and should be sold and bought. I would like to disagree with that approach.

Health care as medical treatment cannot be sold and bought. It is something a person is entitled to just for being a human being, and though having a right to health. However, the

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<sup>18</sup> *Is Health Care a "Right"* 12:05 (2009) available at <http://professorbainbridge.com/Lists/Posts/Post.aspx?ID=2973>

level of that treatment should be different for different situations. If the person wishes to get a simple treatment in order to bring itself to the acceptable living condition then this has to be considered a treatment rather than a service. And in my opinion, it has to be free or have a symbolic price. All the other possibilities medical science has have to be provided in the form of services for a fee. That may be better treating conditions, better food, higher quality medicine etc. However, a new problem on determining the standard of that above mentioned acceptable living condition arises. To my mind, this is a clearly state concern. It has all the appropriate institutions. It can engage professionals, set up a special committee in order to develop propositions, and then organize it in a law or administrative regulation. That will clearly show that treatment applies to basic condition (not only emergency), and services could also be provided for a fee either from a patient or from insurance.

### **3. Private health insurance vs. state health insurance (and state funded health care)**

#### **3.1. Advantages and disadvantages of private health insurance. Good and bad risks debate**

Private health insurance is a very important institute in today's world. Its main social aim is to provide an insured person with sureness that in case of needed treatment he or she would not have to solve problems on where to get money to pay for it. This great idea in theory is however not always that wonderful in practice. High premiums, hard-readable contracts with lots of exceptions, unwillingness of personnel to provide help in critical moments are among the most widely spread qualities insurance companies are famous of.

Yes, insurance companies in some countries do take the responsibilities state takes in the other countries. That is their great advantage for the state. Moreover, they also provide jobs, pay taxes, and by their activity support other businesses. That is a big advantage.

As for individual person, the advantage usually limits by simple risk elimination. Individual does not have to worry about getting finances in critical moment, insurance has to cover it. And that is where main problem arises. Does it really cover?

A huge disadvantage of private health insurance is that it requires insurance companies clients if not to be highly qualified lawyers then to have very decent legal knowledge, and usually good eyesight. Tiny font insurance contracts usually have does not allow to read it comprehensively and fully realize all rights and responsibilities. Insurance companies are also famous for high charges in case of serious or so-called 'bad risks' they insure. That is a great disadvantage on one hand, while sick person would have to pay higher premiums than the healthy one. On the other hand this (same as all private insurance in full) is an advantage, while it does have positive effect for the society. Society benefits from responsibility such system imposes on every member. This is a great way to fight for a

healthy nation. Every person would have the biggest concern in his or her life which is to carefully preserve his or her own health. Otherwise high premiums would not be of a very big fun.

Private health insurance has another positive side. It helps make quality of medical services higher. Getting real money contrary to possible (and usual) delays present in the systems with either state funded health care or state health insurance is clearly beneficial to medical institutions, and provides them with possibilities to develop new techniques, buy better equipment, and provide overall higher quality medical services. Another advantage of private health insurance is that it makes health care a real business with doctors and other medical staff acting as businessmen. This develops general entrepreneurial qualities of the society, and is certainly positive, while lets people earn real money. This consequently leads to taxes paid and people employed which cannot be viewed as disadvantage. Another advantage private health insurance system has is responsibility. This point was dealt with above, however I think it's worth to stress one more time that this system creates such conditions when a person can rely only on him- or herself. This does not create security as in the case with state funded health care or state health insurance, however it gives people freedom of choice, and some nations (like United States, for example) consider that to be a greater value than simple availability of services. Not every other nation supports that point of view.

Another important aspect of private health insurance is the debate over so called 'good' and 'bad' risks. Some recent thoughts on the issue were stated by Jos Daniels, General Manager of ABB-insurance in Belgium.<sup>19</sup> The logical question about their co-existence arises from the very nature of insurance business. Good and bad risks debate exist not only in health insurance sphere. Other insurance spheres also face this problem. The cause is very

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<sup>19</sup> Jos Daniels *Health Insurance: More than Just a Question of Money. The Vision of a Private Insurer* Round table of ISLLSS 4<sup>th</sup> European Regional Congress (180-189)

simple. Insurance is a business, and as any business it is risky by itself, so every businessman (including the ones doing business in insurance sphere) tries to do the most in eliminating those possible risks. This natural position has a very easy explanation. The aim of each businessman is to get profit. Bad risks usually eliminate it or lower it. This is one of disadvantages of private health insurance system to my mind. It does not achieve the expectation of the consumer whose aim while buying an insurance plan is not to make insurance business go smooth, and businessman to get profits but to eliminate his or her own risks. This clear conflict of interests is often resolved in the court. However, not all the time that seems to be possible. Many terrible stories about people not getting treatment because of not having that specific one covered by their insurance contract or because of turning to the medical institution not authorized by the insurance company (however maybe the closest or the most convenient one) are not strange nowadays. One should also add that premiums those people paid to the insurance provider were quite high. What can be done in this situation?

One of the easiest ways out is provide state regulations on which risks should be covered by default. That, however, is a paternalistic approach not every nation would accept. On the other hand one has to understand that such state regulations may lead to elimination of insurance companies at all, while not every businessman would wish to take part in a clearly project of loss. The way out is to my mind keeping a balance. If the state requires insurance company to take bad risks it must also give the possibility to take good risks. Otherwise the sense of insurance business would be lost.

It may be true economically, however would that be true legally? By obliging insurance companies to take bad risks the state regulates business activity, and it for sure can do that. However, giving the possibility to take good risks is quite a hard issue. It may be done in many different ways like simple obligation to include both good and bad risks in the

contract or using market mechanisms by creating such conditions that being insured can become prestigious, for example. Using market mechanisms is a hard thing to do, and can take years and decades in order to be implemented. On the other hand, requiring to include both good and bad risks in the contract will affect people's rights to make a free choice, and would simply be illegal or unconstitutional in most states, to my mind.

That way, a problem of good and bad risks is a serious one. I even consider it to be the most important argument for co-existence of private and state health insurance. In that case the state could take the bad risks (state has to do that by its nature, while that's one of the reasons it was created by the society), and private insurers will take good risks and some bad risks under acceptable conditions.

### **3.2. Advantages and disadvantages of state health insurance (and state funded health care). Quality vs. Availability debate**

State health insurance and state funded health care are considered to be greatest achievements in many countries. The major advantage of such systems is that they provide security and an average acceptable health level of the society. These are true benefits the systems have, however not only benefits are engaged with them.

State health insurance, and especially state funded health care create great dependence on state's actions. The state becomes very paternalistic, and eliminates freedom of choice. It substitutes one benefit for the other. A person under such conditions is unable to make a clear choice, and has to benefit (or suffer) from the choice made by the state. This is more true for state funded health care systems than for state health insurance, however. In the latter case state does not eliminate but seriously limits person's choice of a medical institution (simply to the one that would accept state insurance).

Another disadvantage is quality. Treatment person gets under state health insurance or in a state funded health care system has to fit in with a state standard usually passed by the state in a law or a regulation. However, it is usually very nice in theory, and has little to do with practice. Human is such a creature that has to be constantly stimulated in order to pursue development. Stimulation can come either by encouragement or by intimidation. While in private health insurance system the first approach is most common. Here the intimidation is usually the case. That is usually the reason why medical services quality in totalitarian nations was compatible with the ones that have private health insurance system. In a totalitarian system (Soviet Union, for example) the person could not usually go to the court to protect his or her right to health. Courts were mostly used for criminal cases and resolved some civil or labor disputes. The most usual thing a person would do should he or she be not satisfied with the quality of treatment in the medical institution is to complain to the authorities. What can sound strange, these complaints did have effect. They didn't have

the effect when filed against high officials usually, however when filed against an ordinary doctor they did have outcome. Doctors were either fired or faced different penalties that affected their career etc. That way, they were not interested in getting such complaints, and tried hard to treat patients with a decent level of quality. This does not mean that patients got all the best. However what they got was enough to feel a decent level of comfort.

Consequently, when Soviet Union collapsed, and this system of complaints went down, same did the quality of treatment. A new big problem raised in the health care sphere. I mean bribery.

One would not want to state that it was not present in Soviet times, however, its levels were much lower. Doctors and other different medical officials were afraid of being caught before. After the end of Soviet Union existence this possibility became very unrealistic, and level of bribery has risen greatly.

The reasons for bribery in health care are very simple. I don't fully agree with the point that everything in this world can be sold and bought, but I think here this is the case. The repressive machine that would otherwise intrude was removed, governments constantly under financed health care, and doctors simply did not want to 'survive'. People re-oriented quite fast, and a legally free health care system became actually fee (bribe) based.

That affected both quality and availability. The latter was (and still is) usually possible only to the ones having decent funds to cover doctor's services. As for quality, no one can actually control it. While paying a bribe no contract is being concluded, so no rights and obligations are protected by the state. Moreover, bribing is a crime in all civilized nations. However, people have no other choice. Bribing may not be such a big issue in state health insurance systems, however it may also be the case.

So both state funded health care and state health insurance systems do not have a serious stimulating effect in order to ensure decent quality. In some cases, availability is also

affected.

### **3.3. Prof. Janos Kornai's co-existence proposition. Minimal level debate**

One of the most outstanding researchers in health care (as also in many other social fields) is Professor Janos Kornai. He has proposed famous *Recommendations for the Hungarian Health Reform*.<sup>20</sup> There he dwells on making a borderline between the responsibilities of the citizen and the state. They deserve our attention.

Professor gives the detailed economic characteristic of different processes affecting Hungarian health care, and concludes by 4 points I would like to stress out:

1. All citizens have a right of access to basic provision, guaranteed by the state.
2. The community of citizens, by way of the democratically elected parliament that represents it, alone has the right to establish the macroeconomic budget for the basic, publicly financed provision accessible equally to all. This is where the main dividing line runs between the competence of the state and the competence of the individual.
3. The bodies of doctors and other professionals have primary responsibility for deciding the specific microeconomic allocation of the macroeconomic budget voted for basic provision.
4. In addition to that, all citizens may decide in a sovereign fashion what auxiliary provision to buy with the intermediation of the market.<sup>21</sup>

These points show that Prof. Kornai proposes to combine both state health care with state health insurance, and private health insurance. He makes distinction between basic and auxiliary treatment, and his main point is that basic treatment has to be provided to everyone, while all additional services (he calls them auxiliary treatment can be sold and bought). He also stresses that a very important thing here is to determine a level of basic treatment, create a distinct borderline, and as an economist, he proposes ways to determine the amount of costs

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20 Janos Kornai, *The Borderline between the Spheres of Authority of the Citizen and the State: Recommendations for the Hungarian Health Reform, Reforming the State. Fiscal and Welfare Reform in Post-Socialist Countries 181-209* (Cambridge University Press) (2001)

21 Kornai, *supra note* 19 at 196

to be allocated for basic treatment provision.

This point seems to create balance, and I consider it to be interesting not only from Hungarian point of view. This system could be reasonable in many other countries regardless of them having capitalist or socialist past or state or private health insurance. This system gives a balanced point, where the citizen would not have to worry about not getting treatment because of being unable to pay for it, however it gives also possibilities to purchase additional services if willing to.

Clearly this system is also not without possible problems. The biggest problem may concern doctors. This system creates two distinct groups of doctors. One group would provide basic medical treatment, the other would provide additional services. Even though they may coincide, most specialists would prefer to join the latter group while it brings real money. However, this concern is possible to fix, to my mind. Here the state need not to feel itself as a market player but as a market regulator. It is possible to rise wages to doctors providing basic health treatment, improve their working conditions. This would stimulate the rest to improve their qualities, set concurrent labor payments, and eventually develop business (which means jobs, taxes, social stability etc.). However this is possible only in a strong society with a responsible government.

Another thing Prof. Kornai did not take into account is the existence of human rights. When right to health is considered a human right (as it is in European Social Charter, for example) one can simply not be sure whether it will be protected because the state may not have sufficient resources to do that. However, that does not mean that the right to health has to be eliminated for that very reason.

That may also lead to another debate on what is the threshold between right granting and right implementation, and is the existence of right to health enough to get medical treatment. Does the existence of the right to health determine the level of medical treatment a

state has to provide to an individual? To my mind, it certainly does. Right to health being a positive right (requiring huge state involvement in its granting and implementation) does require clear determination of what should be provided free of charge, and what goes beyond it and can be sold and bought. Many states like Ukraine and Belarus, for example, took obligations to protect right to health. These provisions were included in their constitutions. However, I would not say that they fulfill their promises.

Both countries have state funded health care. However Ukraine has a highly corrupt system with quality getting lower every year. Belarus has a similar system, however quality is much higher, and level of corruption is much lower.. This is very easy to explain by turning to description of political regimes governing both countries. However, the point is not there. I would like to stress that both these systems did not fulfill their obligations stated in constitutions in full. I don't actually believe it's possible at all. German system with state health insurance does not also seem perfect to me, while it also creates some level of uneven treatment, while some doctors may not accept patients insured by the state. U.S. system has another problem. Having high quality, it is not available to everyone, and it is often the case that people cannot get treatment because of insurance company creating very strict rules in choosing specialists and the risks.

That way, Prof. Kornai's recommendations seem reasonable and adequate. They need also to be brought up with national legislation and international documents ensuring that right to health is a human right. This can be done for example by securing a certain article of state budget (providing costs to a certain sphere no matter what).

# Conclusion

A big debate on privatization of health insurance going on now in most post socialist and post Soviet countries seems never to end. Reasonable propositions of Prof. Kornai that could help solve the problem of medical treatment availability and medical services quality don't seem to be heard and considered in the nearest future. Privatization of health insurance, as privatization in whole became a political issue. It is much easier to promise more costs to be provided for health care system before each elections than to make a decent reform that would not bring political dividends.

However, not only the fact that this issue is highly political affects the reforms. There are many other factors that were not raised before in this paper. One of them is different cultural approaches. For example, it is well-known that Americans consider freedom of choice one of their fundamental liberties. They may make a bad choice. They may lose money, power, health etc. However, they always know that they are the ones who made that choice and they are the ones responsible. This very individualistic approach is not supported in many other countries like Germany, for example. German solidarity has roots in Bismarck times, and has its positive qualities. People make major choices but they are not afraid of possible non-availability of essential things. Ukrainian system does not also support a clearly individualistic approach, however, to my mind, its approach is much more individualistic than the one in Belarus. Having a destabilized health care system the state eventually forced private health care and private health insurance to arise. People have choice between poor quality in highly corrupt state or municipal medical institutions (however poor quality is not always the case mostly due to previous Soviet experience of elderly doctors) and controllable quality in private institutions charging high fees, and insurance companies acting not much differently than the ones in the United States. Belorussian way seems mostly following an old Soviet pattern, however private health care and private health insurance does exist while

not very popular because of a usually high quality in state and municipal institutions.

So each of the analyzed countries has its own way of organizing health care system. Some apply private health insurance, some apply state insurance. Some put the funding onto the state. However, recent attempts to privatize health insurance system in Ukraine with motivations like “people pay bribes anyway, let them do it legally” adopted for example by Kyiv city council recently cannot be considered as a normal way of state governing. This simply shows that the state created such conditions that it is easier to commit a crime (bribery) than to go to a legally operating private doctor.

I think Prof. Janos Kornai's recommendations fit Ukraine out of the four analyzed countries the most. It is still in transition from socialism to democracy, and from command economy to market economy. It still cannot realize what it wants to build, and people still cannot make a choice between individual and collective values.

I personally believe that Prof. Kornai suggested an ideal model that could be used in every country regardless of the values of its society, however I also think that states adopt different patterns in different periods of their development. The most important thing is not to mess up in choosing one.

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