

Healthcare fraud in the United States of America and Ukraine: A comparative legal research

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ABSTRACT

Aim: To conduct a comparative legal study of healthcare fraud in the United States of America and Ukraine.

Materials and Methods: This study is based on the analysis of the US federal regulatory legislation (False Claims Act, Anti-Kickback Statute, Stark Law); data from the Fraud Section of the US Department of Justice for the last five years; case law in Ukraine (more than 30 court verdicts were analysed); data from the National Health Service of Ukraine. Dialectical, hermeneutic, comparative, analytical, synthetic, and systems analysis research methods were used.

Results: The criminal legislation acts that provide for criminal liability for healthcare fraud under the laws of the United States and Ukraine are analysed; the criteria for identifying types of healthcare fraud and related criminal offences are defined. It is determined that healthcare fraud has a multidimensional nature, which can manifest itself in different ways, but the common purpose in these manifestations of criminal behaviour is deception or intentional distortion of facts to obtain money or property that is under the control of or owned by any healthcare benefit programme (in the US) or medical guarantees programme (in Ukraine). There are various illegal manipulations with the state programme of medical guarantees. Starting from 2021, the judicial practice of Ukraine lacks a single acceptable approach to the criminal legal assessment of such illegal manipulations.

Conclusions: The experience of the United States in determining the types of criminal offences that constitute healthcare fraud and establishing criminal liability for their commission is appropriate to borrow.

KEY WORDS: fraud, drugs circulation, criminal offence, liability

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INTRODUCTION

Over the past five years, healthcare fraud in the USA has become a serious problem, as the amount of damage from committing this type of white-collar crime increases every year, which also causes an increase in the cost of healthcare programmes for the US federal government. The consolidated report of the Fraud Section of the US Department of Justice (2024) states that the average loss from fraud per person charged in the USA was over \$35 million [1]. According to estimates by the National Health Care Anti-Fraud Association, financial losses due to healthcare fraud in the USA amount to billions of dollars every year [2]. The United States has developed effective mechanisms to combat healthcare fraud. Ukraine began the transformation of the healthcare sector in 2017, and the state's purpose was to change the financing model in order to create a competitive environment in the circulation of medi-

cal and pharmaceutical products. The National Health Service of Ukraine was created as a manager of budget funds, the main task of which was the implementation of the medical guarantees programme in Ukraine. Judicial practice indicates the presence of fraud schemes with funds allocated by the state within the framework of the medical guarantees programme. Borrowing the experience of other states is extremely important for Ukraine, which seeks to move away from the model that existed before. And the experience of the USA will be invaluable in the further development and reconstruction of Ukraine.

AIM

The aim of the study is to conduct a comparative legal research of healthcare fraud in the United States and Ukraine.

Table 1. Data on healthcare fraud in the United States for 2020-2024

Year	Amount of damages (in USD)	Total accused (individuals)	Individuals convicted by pleading guilty in court
2024	3,33 billion	147	165
2023	3,83 billion	143	186
2022	2,3 billion	158	217
2021	1,76 billion	202	205
2020	3,77 billion	167	144

MATERIALS AND METHODS

This article is based on the analysis of acts of US federal regulatory legislation (False Claims Act (1868), Anti-Kickback Statute (1986) and Stark Law); data of the Fraud Section of the US Department of Justice for the last 5 years (2019-2024), as well as the legislation of the US states (such as California, New York, Texas, New Jersey, etc., a total of 15 states); case law in Ukraine (more than 30 court verdicts taken from the Unified State Register of Court Judgments of Ukraine were researched); data of the National Health Service of Ukraine; data from the official website of the Office of the Prosecutor General of Ukraine. Dialectical, hermeneutic, comparative, analytical, synthetic and system analysis research methods were used.

ETHICS

The authors declare that in preparing the article “Healthcare fraud in the United States of America and Ukraine: comparative legal research” all ethical principles and rules of academic integrity were observed.

RESULTS

In recent years, healthcare fraud has become more complex, resource-intensive, and costly than ever before. This is supported by data collected through publicly available information on healthcare fraud in the United States over the past 5 years, provided by the Fraud Section of the US Department of Justice. The systematized data is provided in Table 1.

Fig. 1 presents quantitative figures for trials and convictions in trials provided by the Fraud Section of the US Department of Justice for 2018–2023 [1].

Analysis of this data shows that healthcare fraud in the United States is a nationwide problem and that there is a statistically significant trend of increasing both the number of such cases and the amount of losses, which is due to the increase in spending on federal government healthcare programmes.

The regulatory laws that define the types and penalties for healthcare fraud in the United States are: 1) the False Claims Act (1868), which imposes liability on indi-

viduals and companies (usually federal contractors) who defraud government healthcare benefit programmes. Experts estimate that up to 10% of all healthcare costs are the result of false claims [3]; 2) Anti-Kickback Statute (1986), which prohibits financial payments or inducements for patient referrals or healthcare decisions. This federal law is codified in Title 42 *Public Health and Welfare* U.S. Code [4], and provides for criminal liability for those who knowingly and intentionally offer, solicit, receive, or pay any form of compensation in exchange for a referral to obtain services or products (including drugs) under any federal healthcare programme. The Statute is one of the most important healthcare fraud laws in the United States; 3) the Stark Law is a set of rules that define the federal prohibition on receiving “self-referrals” (self-referral prohibition), regulated by § 1395nn. *Restrictions on Referrals from Certain Therapists*, Title 42 U.S. Code.

These laws provide the US legislature with an understanding of the variations of fraud that show the main schemes that offenders use to avoid liability for illegal acts with healthcare benefit programmes (such as Medicare, Medicaid, etc.).

Types of healthcare fraud in the United States range from the illegal activities of an individual to large-scale operations by medical or pharmaceutical companies. The following criteria have been proposed for dividing types of healthcare fraud in the US: 1) violations of laws prohibiting kickbacks and certain financial arrangements; 2) manipulation of clinical trials/fraud against the Food and Drug Administration; 3) risk adjustment fraud; 4) compounding fraud; 5) illegal substitution of drugs; 6) Medicaid best price fraud; 7) fraud by pharmacy benefit managers; 8) prescription drug programme fraud (Medicare Part D fraud); 9) abuse of the 340B drug discount programme for low-income and uninsured patients; 10) fraudulent billing for services in violation of the False Claims Act; 11) off-label marketing of prescription drugs; 12) telemedicine fraud.

Fig. 2. presents the most common types of healthcare fraud in the United States.

In Ukraine, the transformation of the healthcare system began after the adoption of the Law of Ukraine “On State Financial Guarantees of Medical Services

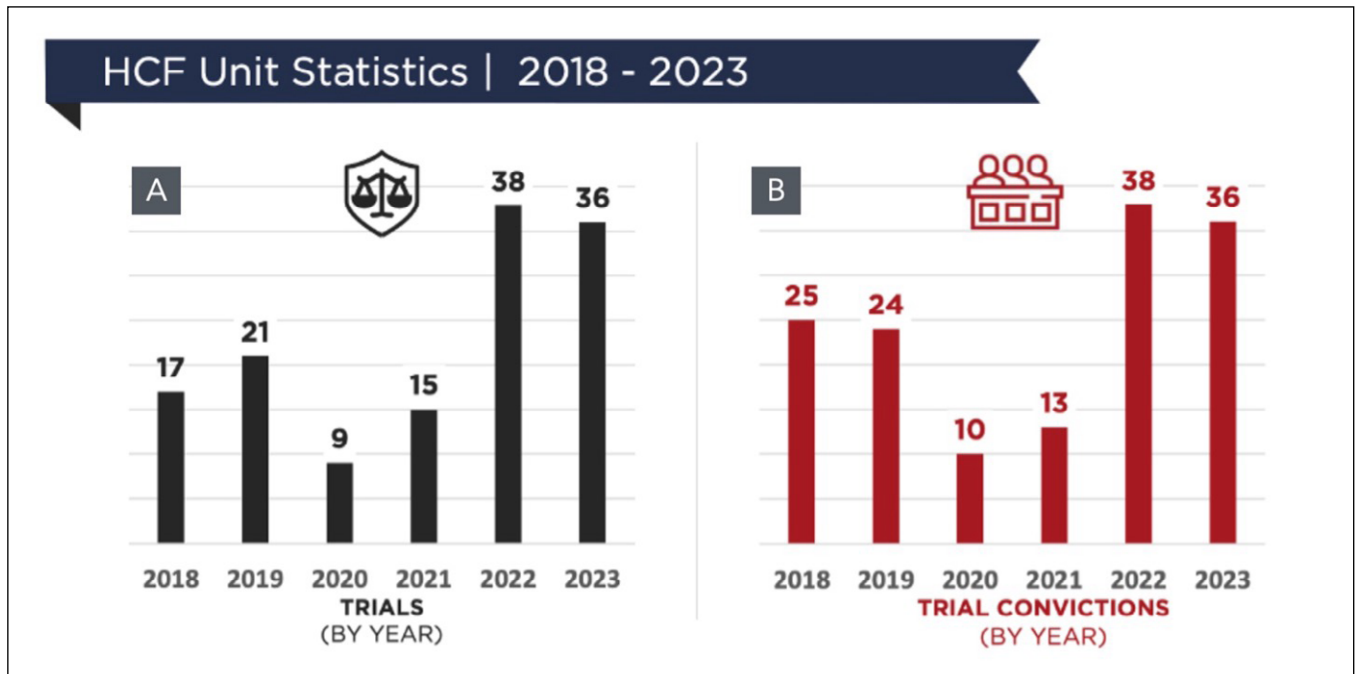


Fig. 1. Data from the Fraud Section of the US Department of Justice for 2018-2023 [1] (A — shows the number of court proceedings in a given year; B — shows the number of court decisions in a given year)

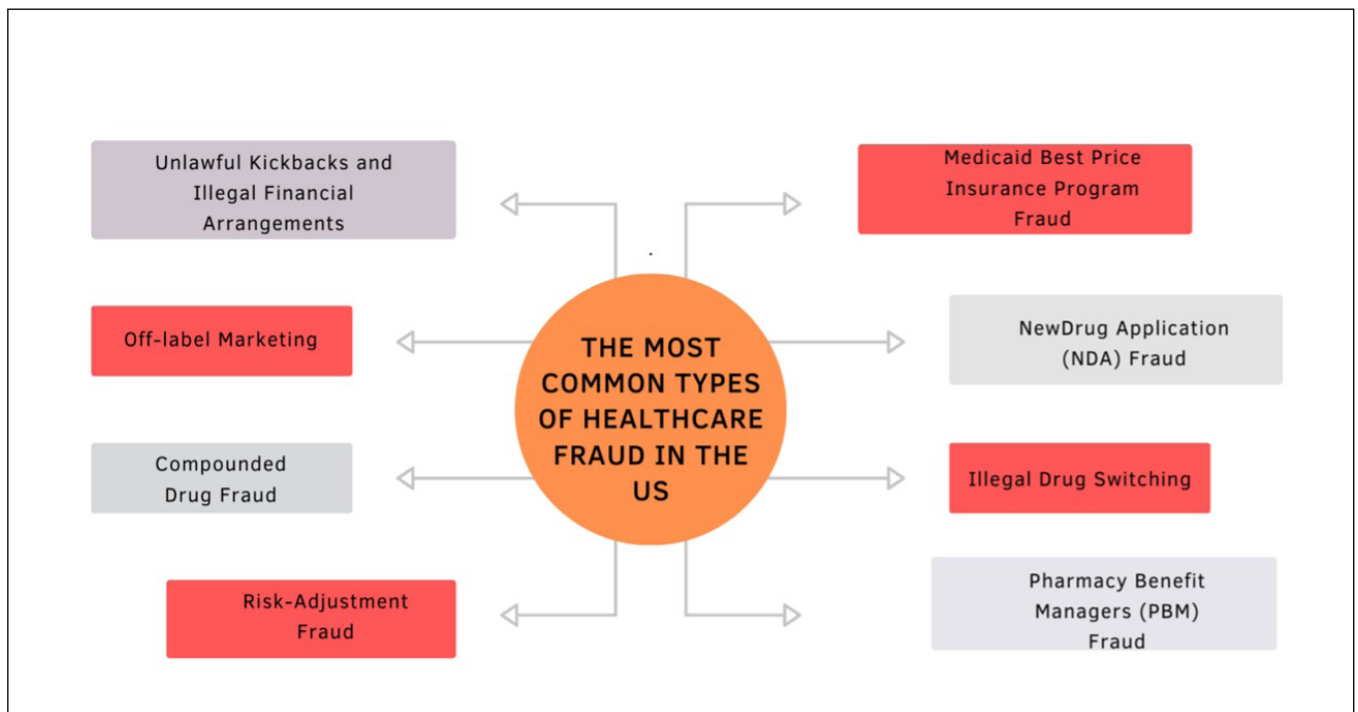


Fig. 2. The most common types of healthcare fraud in the United States

for the Population" (2017) [5]. This law established financial guarantees from the state at the expense of the State Budget of Ukraine for the provision of necessary medical services and drugs of proper quality to patients within the framework of the reimbursement programme. These are components of the medical

guarantees programme, which has been in effect in Ukraine since 2017, the emergence of which was due to the beginning of the Medical Reform [6]. An important component of the medical reform was the implementation of the Concept for the Development of Electronic Health Care in Ukraine [7].

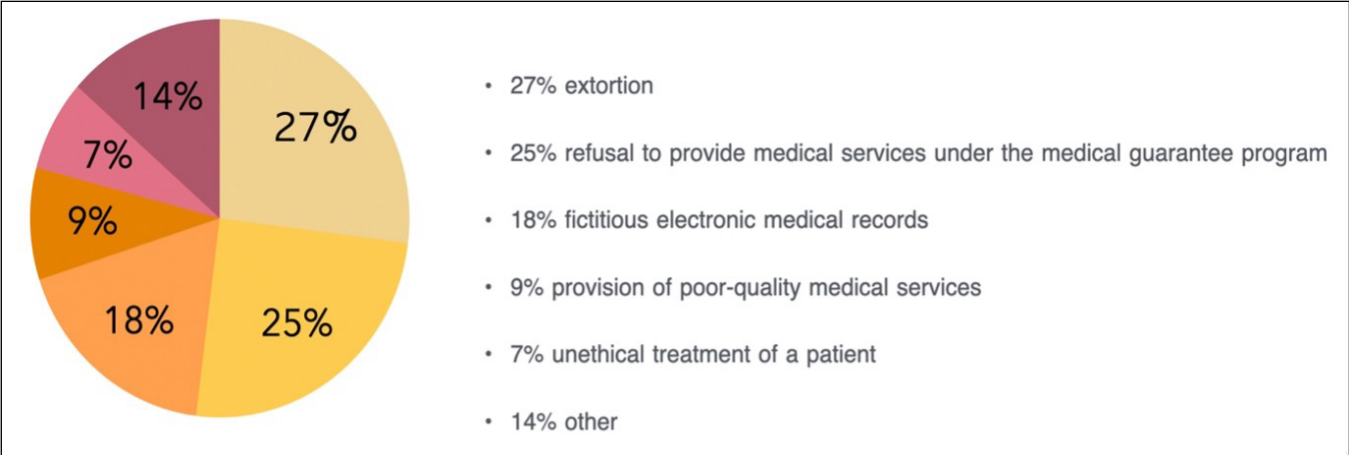


Fig. 3. Data on complaints received from patients regarding the medical guarantees program for 2023 from the National Health Service of Ukraine [8]

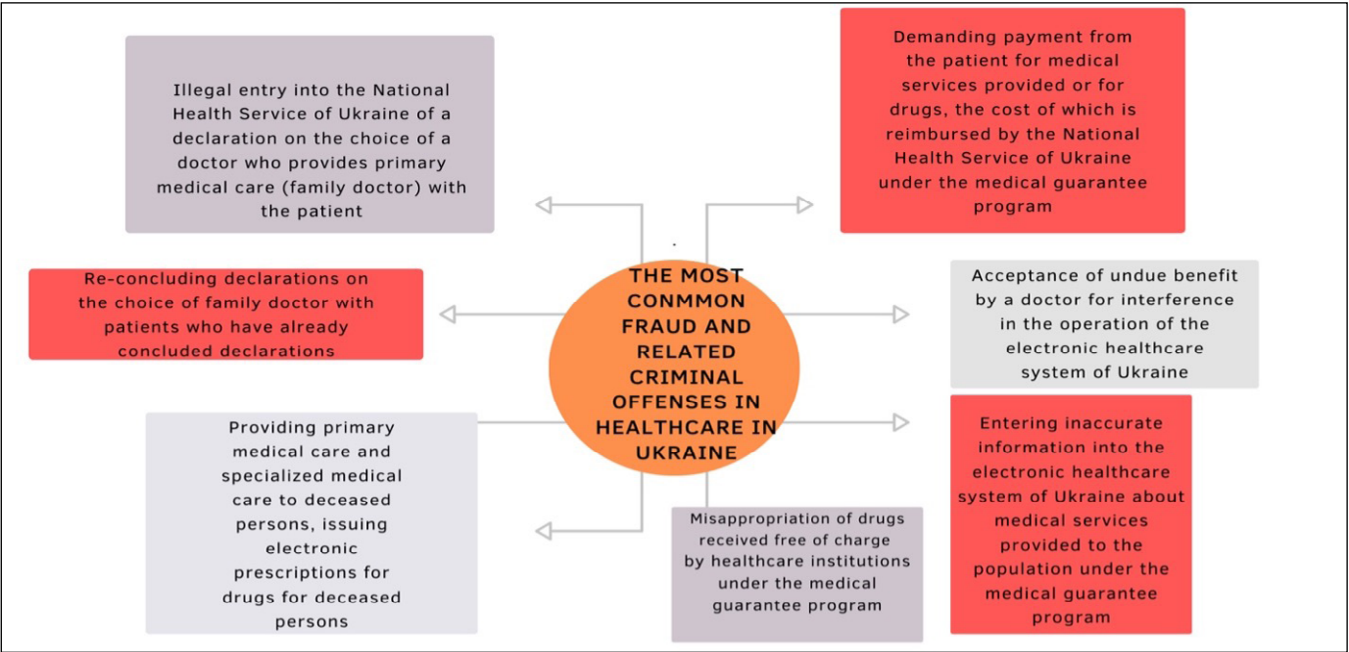


Fig. 4. The most common fraud and related criminal offenses in healthcare in Ukraine

The National Health Service of Ukraine (created in 2017) records complaints about violations of patients' rights; most of them are considered in the procedure of claims work (Fig. 3).

In order to respond to such complaints, the National Health Service of Ukraine monitors the implementation of contracts under the medical guarantees program. This procedure established by the Resolution of the Cabinet of Ministers of Ukraine "On Contracts for Medical Services of the Population under the Medical Guarantees Program" (2018) [9]. Clause 28 of this Resolution stipulates that if, during the monitoring, facts are identified that may indicate the commission of a criminal offense or violations of the terms of provision of medical services, the consideration of which is outside the contractual relations between the provider and the customer and the rights of the customer under the

contract, the customer shall transmit information about such facts to the relevant state and law enforcement agencies. If such facts are a criminal offence, criminal liability may arise for their commission.

The most typical criminal offenses with the medical guarantees program include: 1) entering into the e-health system a declaration on the choice of a doctor who provides primary medical care (family doctor) with a patient in the absence of his will and consent or will and consent of his legal representative; re-concluding the declaration on the choice of a doctor who provides primary medical care with a patient who has already concluded it; 2) demanding from the patient payment for medical services provided or payment for drugs, the cost of which is reimbursed by the National Health Service of Ukraine under the medical guarantees program in accordance with the agreement on state financial

guarantees for medical services for the population concluded with a healthcare institution or an individual entrepreneur doctor; 3) provision of primary medical care and specialized medical care to deceased persons, issuing electronic drug prescriptions for deceased persons; 4) entering unreliable information into the e-health system about medical services provided to the population under the medical guarantees program, which may include: a) formation of fictitious reports on medical services provided; b) issuing referrals for laboratory diagnostics, which the patient was not aware of or which were not free of charge; c) drug prescribing under the "Affordable Drugs" program to those persons who did not actually apply for an electronic prescription; d) erroneous clinical coding; 5) acceptance of an unlawful benefit by a doctor for interference in the operation of the e-health system; 6) appropriation of drugs received free of charge by health institutions under the medical guarantees program under agreements with the National Health Service of Ukraine and their further sale.

As a rule, the criminal intent in such criminal offenses is aimed at obtaining from the state the right to receive additional funds provided for the encouragement of the doctor who provides primary medical care for concluding a declaration with the patient on the choice of a doctor. In order to clarify the way the state responds to such criminal offenses, judicial practice was analyzed. But such illegal acts will not always be classified as fraud. It is necessary to distinguish fraud from related criminal offenses in healthcare in Ukraine. The analysis showed that the share of criminal offenses with the medical guarantees program belongs to actions of entering declarations on the choice of a doctor who provides primary medical care into the e-health system in the absence of the will and consent of the patient or his legal representative. These offenses are committed by persons who have the right to access electronic media using a service computer and a personal key with an electronic digital signature and an access identifier to the National Health Service of Ukraine database and are mainly classified under Part 1 or 2 of Article 362 of the Criminal Code of Ukraine [10].

Fig. 4 presents the most common fraud and related criminal offenses in healthcare in Ukraine.

DISCUSSION

Healthcare fraud has a multidimensional nature, which can manifest itself in different ways, but the common purpose in these manifestations of criminal behavior is deception or intentional distortion of facts in order to obtain money or property that is under the control or owned by any healthcare benefit program (in the US

or medical guarantees program (in Ukraine). According to the criminal law of Ukraine, healthcare fraud should be distinguished from related criminal offenses in healthcare.

In search of a definition of the concept of fraud, let us turn to the Dictionary of Criminal Justice Data Terminology of the US Department of Justice, which states that fraud (fraud offense) is a criminal type comprising offenses sharing the elements of the practice of deceit or intentional misrepresentation of facts, with the intent of unlawfully depriving a person of his property or legal rights [11].

Healthcare fraud, as part of white-collar crime in the US, can be traced in the research of such American scholars as G. Becker (1968) [12], P. Kalb (1999) [13], R. Goel (2020) [14], K. Drabiak & J. Wolfson (2020) [15].

In Ukraine, fraud is considered to be the taking of another person's property or the acquisition of property rights through deception or abuse of trust (Article 190 of the Criminal Code of Ukraine) [10]. It has been the subject of consideration by a number of scholars, but healthcare fraud has only been considered indirectly [16-20].

Federal charges of healthcare fraud are based on § 1347, Title 18, US Code, which provides for criminal liability if a person knowingly and intentionally carries out or attempts to carry out a scheme or ruse to defraud any healthcare benefit program by making false claims, statements, or promises to obtain money or property under the control or ownership of any healthcare benefit program [21]. The mechanism of fraud may vary depending on the type of benefit program involved or the purpose of the fraud – either to obtain money or to obtain a valuable service. It is a criminal offense in the US. The punishment depends on the qualifying characteristics.

Healthcare fraud occurs when a person, company, or provider commits fraud under a federal government healthcare or insurance program. In the US these programs include Medicare, Medicaid, TRICARE, or similar programs, and the result is often unfair competition. For example, Medicare (a U.S. government program that provides hospital and voluntary health insurance for people aged 65 and older and certain disabled people under age 65; effective January 1, 1992 [22]) and Medicaid (a federal, state, and local government-funded hospital and health insurance program for people of all ages and income levels) help their beneficiaries pay for prescription drugs [23]. There are different types of Medicare fraud, all of which have the same purpose: to illegally obtain reimbursement from Medicare or Medicaid or similar programs. In Ukraine information about the services provided is recorded in the e-health system,

which is administered by the state enterprise “Electronic Health”. Unauthorized access to the e-Health system, improper record keeping, and filing illegal claims for payment for medical services are the most common manifestations of unlawful behavior regarding the state health care guarantee program, which constitutes healthcare fraud or is related to other criminal offenses.


CONCLUSIONS






1. The experience of the United States in determining the types of criminal offenses that constitute healthcare fraud and establishing criminal liability for their commission is appropriate to borrow. Healthcare fraud in the United States is fraud with government healthcare benefit programs (the most common among them are Medicare and Medicaid), which, as a negative phenomenon, emerged in the US almost immediately after the introduction of these programs (in particular, since 1992, when the Medicare program was implemented in the US, and later – other programs). The US law enforcement system was faced with manifestations of healthcare fraud, and medical and pharmaceutical companies, doctors, pharmacists, and intermediaries (such as

pharmacy benefit managers) began to implement fraudulent schemes. The experience of the US in combating fraud at both the regulatory and enforcement levels deserves to be borrowed, especially considering the fact that in Ukraine, as part of the healthcare reform, its own healthcare program began to operate in 2017, which is called the medical guarantees program.

2. An important difference between the US and Ukrainian healthcare systems is the lack of mandatory health insurance in Ukraine, as well as the presence of a less developed drugs circulation market and significantly less funding in the state healthcare sector. There are various illegal manipulations with the state medical guarantee program, which is financed from the State Budget of Ukraine, and by their nature, these are healthcare fraudulent actions (in particular, the dispensing of prescription drugs under the “Affordable Medicines” program, medical “kickbacks,” and other manifestations of monetary compensation). However, starting from 2021, the judicial practice of Ukraine has lacked a single acceptable approach to the criminal-legal assessment of such illegal manipulations. Therefore, there is an urgent need for such a criminal-legal assessment.

REFERENCES

1. Froud Section. United States Department of Justice. Year in review. 2024. <https://www.justice.gov/criminal/media/1385111/dl?inline=> [Accessed 11.03.2025]
2. The Challenge of Health Care Fraud. The National Health Care Anti-Fraud Association. <https://www.nhcaa.org/tools-insights/about-health-care-fraud/the-challenge-of-health-care-fraud/> [Accessed 11.03.2025]
3. Healthcare & Pharmaceutical Fraud. What potential whistleblowers need to know about reporting fraud in the healthcare industry. <https://constantinecannon.com/practice/whistleblower/whistleblower-types/healthcare-fraud/> [Accessed 11.03.2025]
4. 42 USC 1320a-7b: Criminal penalties for acts involving Federal health care programs. <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section1320a-7b&num=0&edition=prelim> [Accessed 11.03.2025]
5. Pro derzhavni finansovi harantiyi medychnoho obsluhovuvannya naselennya [On state financial guarantees for medical care for the population]: Law of Ukraine from 19.10.2017. № 2168-VIII. <https://zakon.rada.gov.ua/laws/show/2168-19/card2#Card> [Accessed 11.03.2025] (Ukrainian)
6. Medychna reforma [Medical reform]. <https://www.kmu.gov.ua/reformi/rozvitok-lyudskogo-kapitalu/reforma-sistemi-ohoroni-zdorovya> [Accessed 11.03.2025] (Ukrainian)
7. Kontseptsiya rozbudovy elektronnoyi okhorony zdorov'ya v Ukrayini [The concept of developing e-healthcare in Ukraine]. <https://moz.gov.ua/uk/news/koncepciya-rozbudovi-elektronnoyi-ohoroni-zdorov-ya-ukrayini> [Accessed 11.03.2025] (Ukrainian)
8. Zvit Natsional'noyi sluzhby zdorov'ya Ukrayiny [Report of the National Health Service of Ukraine]. 2023. <https://edata.e-health.gov.ua/storage/files/report-2023-ua-web-1-1.pdf?1742134834> [Accessed 11.03.2025] (Ukrainian)
9. Pro dohovory pro medychne obsluhovuvannya naselennya za prohramoyu medychnykh harantiy [About contracts for medical care for the population under the medical guarantees program]: Resolution of the Cabinet of Ministers of Ukraine from 25.04.2018 № 410. <https://zakon.rada.gov.ua/laws/show/410-2018-n#Text> [Accessed 11.03.2025] (Ukrainian)
10. Kryminal'nyy kodeks Ukrayiny [Criminal Code of Ukraine]: Kodeks Ukrayiny vid 05.04.2005 r. № 2341-III. <https://zakon.rada.gov.ua/laws/show/2341-14#Text> [Accessed 10 March 2025] (Ukrainian)
11. U.S. Department of Justice, Dictionary of Criminal Justice Data Terminology. 2nd Ed. Washington, D.C.: Search Group Inc. 1981, p.258.
12. Becker G. Crime and Punishment: An Economic Approach. *Journal of Political Economy*. 1968;76(2):169-217.
13. Kalb PE. Health Care Fraud and Abuse. *JAMA*. 1999;282(12):1163–1168. doi:10.1001/jama.282.12.1163. 

14. Goel R. Medical professionals and health care fraud: Do they aid or check abuse? *Managerial and Decision Economics*. 2020;41(4):520–528. doi:10.1002/mde.3117. 
15. Drabiak K, Wolfson J. What should health care organizations do to reduce billing fraud and abuse? *AMA J Ethics*. 2020;22(3):E221–E231. doi:10.1001/amajethics.2020.221. 
16. Berzina A, Pletenetska A. Forensic medical and legal analysis of cases of improper performance of professional duties by medical employees, including incorrect prescription of medical product. *Pol Merkur Lek*. 2025;53(1):94–99. doi:10.36740/Merkur202501113. 
17. Dyachuk M. Normatyvnintehratsiya v sferi okhorony zdorov'ya Ukrayiny [Regulatory integration in the healthcare sector of Ukraine]. *Klinichna ta profilaktychna medytsyna*. 2025;1:153–161. doi:10.31612/2616-4868.1.2025.18. 
18. Batorygareieva V, Babenko A, Kaija S. Corruption in medical sphere of Ukraine: current situation and ways of prevention. *Wiad lek*. 2019;72(9):1814–1821.
19. Pashkov V, Soloviov O, Harkusha A. Legal characteristics of pharmaceutical activity under the emergency conditions: pandemic and war. *Wiad lek*. 2022;75(9):2286–2292. doi:10.36740/WLek202209219. 
20. Berzin P, Volynets R, Ptashchenko D. Kryminal'ne pravo. Zahal'na chastyna: praktykum: navchal'nyy posibnyk [Criminal law. General part: practical course: textbook] za red. P.S. Berzina. Kyiv: Alerta. 2023, p.608.
21. 18 U.S.C. 1347. Health care fraud. <https://uscode.house.gov/browse/prelim@title18/part1&edition=prelim> [Accessed 11.03.2025]
22. Medicare. Cambridge Dictionary. <https://dictionary.cambridge.org/dictionary/english/medicare> [Accessed 11.03.2025]
23. Medicaid. Cambridge Dictionary. <https://dictionary.cambridge.org/dictionary/english/medicaid> [Accessed 11.03.2025]

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CONFLICT OF INTEREST


























The Authors declare no conflict of interest

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