

LEGAL ASPECTS OF MEDICAL REFORM'S IMPLEMENTATION: POLAND'S EXPERIENCE FOR UKRAINE

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Abstract. *The academic paper has analyzed the experience of implementing the reform of the health care system in Poland, taking into account the legal regulation of the measures taken. The attention is focused on the basic stages of the medical reform, as well as the features of each stage. The legal aspects of the process of reforming the health care system in Poland have been investigated; they determine the sources and methods of financing health services, the level of quality of health care and the functioning of the health care system in general. The individual components of the health care system related to compulsory health insurance have been described. Based on the analysis, it has been proved that in practice there is no single universal model of financing the health care system. The experience of the functioning of health care in Poland has shown that the experience of reforming the health care system in Poland can be successfully implemented in the practice of medical reform in Ukraine, provided that the historical, economic and cultural features of the country are taken into account. It has been concluded that in order to improve measures to reform the medical system of Ukraine it is necessary to develop and implement measures aimed at the development of health insurance and medical self-government. Introduction of health insurance in Ukraine will help improve medical services, improve the management of the entire health care system and its financing.*

Keywords: *health care system; medical reform; medical insurance; medical services; medical self-government; financing system; legal aspects; Ministry of Health of Poland; compulsory health insurance; voluntary health insurance.*

JEL Classification: G18, G28, H12, H55, H56, I18.

Formulas: 0; **fig.:** 1; **tabl.:** 2; **bibl.:** 11

Introduction. In Ukraine, the process of reforming the health care system has been carrying on, the urgent tasks of which center around the legislative introduction of insurance medicine and medical self-government. After signing the Association Agreement with EU, the Ukrainian state has simultaneously agreed to adopt formal laws and principles for organizing activities in the sphere of medicine. The experience of foreign countries proves the need and effectiveness of such changes, because insurance medicine “unloads” the budget, and the self-government of doctors, nurses and pharmacists; it promotes the development of the medical industry and creates healthy competition for public medicine. However, currently in Ukraine the health care sector is completely controlled by the state because of lack of medical self-government and the system of voluntary insurance, which can really improve the medical system. Therefore, the best practices of countries that have already passed the basic stages of health care reform, should help Ukraine identify key priorities for further development of the health care system. The experience of Poland is the most

interesting and useful in this context; consequently, it has become the subject matter of this academic paper.

Literature review. The issue of health care reform in Ukraine and abroad has been studied by modern legal scholars, as well as researchers in the field of public management and administration. Thus, Ye. Linnakko, U. Mattila, W. Rudy [6] have studied foreign experience in ensuring the right to health care in EU and, in particular, in Poland; H. Muliar has studied foreign experience in reforming the field of medicine in the context of ensuring the right to health care [7]; D. Haidash has investigated the public administration mechanisms of health care reform in Poland [2]. The issues of reforming the health care system in Poland were also studied by Polish scientists: V. Brosowska, Ts. Vlodarchyk, L. Koliarska-Bobinska, Yu. Ploskonka, Ya. Sepiol, K. Tymovska, Ye. Tsikhotska and others. In addition, the theoretical aspects of studying the legal instruments of state influence on the process of reforming the health care sector have been investigated by M. Bilynska, M. Buchkevych, L. Zhalilo, O. Martyniuk [1] and a number of others. However, despite the extensive coverage of the problems of reforming Ukrainian and European medicine, there is a need for a deeper legal study of the course of medical reform in Poland for its further application in Ukraine.

Aims. The purpose of this academic paper is to analyze the experience of health care reform in Poland with an emphasis on the legal aspects of health care reform in this country. The result of this analysis lies in identifying the positive and negative consequences of the reform, which will help determine further ways of health care reform in Ukraine.

Methods. The authors have used the method of analysis of scientific literature and regulations in the article, as well as the method of comparing current legislation in the medical field of Ukraine and Poland. In addition, in the course of studying the process of health care reform in Poland, historical and logical methods have been applied, and the method of generalization has been used to draw conclusions. The outlined methods have contributed to achieving the purpose set in the academic paper.

Results. The problem of reforming the health care system is urgent for most countries in the world; insomuch as rising spending on medicines, increasing demand for health care due to an aging population, and the introduction of new costly medical technologies require the authorities to change the structure of care, approaches to its financing, and the division of responsibilities between the state, private sector, and citizens. One of the ways to adequately change the health care system is to reform it. The countries of Central and Eastern Europe have chosen the scheme of health insurance and medical self-government in order to reform the health care system. Forasmuch as health care reform has been launched later in Ukraine than in European countries, it has a unique opportunity to study the experience of these countries and apply it, avoiding unwanted mistakes. It should be noted that all European countries that had already implemented health care reform, tried different models, looking for the best solutions and models that would meet the conditions of a particular country [6].

During the implementation of reforms in different countries, it has been revealed that one of the leading areas of reform is to address the problem of financing the health sector. In this context, modern scholars - jurists are actively discussing the feasibility of transforming medical institutions from budgetary institutions into non-profit entities, predicting the possibility of the existence of medical institutions as business entities and focusing on public contracts for medical care [10]. The legal aspects of the process of reforming medicine in such conditions are especially interesting for Ukraine, and the experience of Poland, in particular, can help find ways to solve the painful problems of Ukrainian medical reform. And although the Polish health care system is not exemplary, many elements that are currently being implemented in Ukraine, are functioning quite effectively in Poland.

Considering the way Poland has undergone in the process of reforming medicine, it is necessary to examine more specifically the stages that took place after the end of the socialist era. At that time, there was an urgent need in Poland to change the high-cost model of the health care system, which was a heavy burden on the country's budget. This was the reason for launching the medical reform, which began with large-scale transformations in the state in 1989. In the first period of the reform, health care providers began to carefully calculate costs and produce only services that were beneficial to them in the new financial environment. Subsequently, health care facilities began to limit costs by reducing the number of employees and by reducing the quality of medical services. Hence, the new reform should have helped to raise additional funds for the maintenance of the country's health care system, as the funds received through the collection of insurance premiums were insufficient. Serious legislative amendments were required to attract additional funds through the development of voluntary patient insurance, as well as the introduction of payment for services that were not provided by the terms of general insurance [2].

Polish health care reform is also linked to the adoption of laws on health care facilities (1991) and compulsory health insurance (1997). The basic priorities of the medical sector in the reform process are the completeness, quality and availability of medical services (Figure 1) [2].

The right of all Polish citizens to health care and free medical care is declared in Article 68 of the Constitution (1997). The basic objectives of health care reform center around increasing the efficiency of the use of limited resources and the need to increase public spending on health care. Laws on the professional activities of doctors, nurses and their self-government, adopted over the past few years, have played an important role in the process of reforming the health care system [5].

Each period of development of medical reform had its own features and consequences, which determined the subsequent actions of the Polish government concerning adoption new legal acts to regulate changes in the health care system (Table 1) [2].

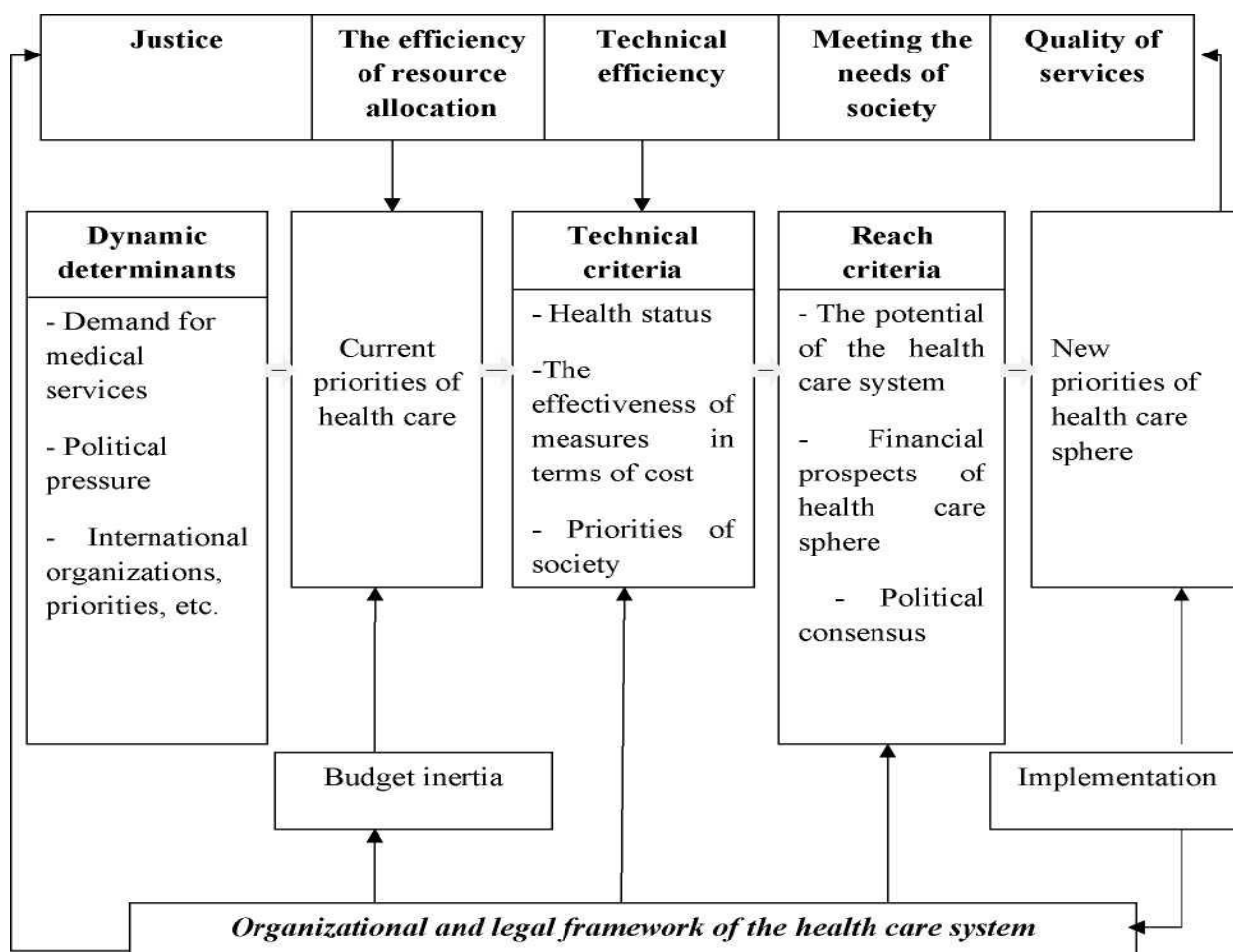


Fig. Priorities of development of health care system

The reform program was actively pursued in 2008, when it was thoroughly discussed with the participation of trade unions, local governments and social groups. An important proposal of the Ministry of Health of Poland was to provide greater autonomy to state health centers and turn them into companies governed by the Commercial Code. Other proposals from the Ministry also included the introduction of additional private health insurance sector. In addition, due to the adoption of the Law on Accreditation in the Health Care System as of 2008, accreditation was taken into account in the distribution of the National Health Fund and drafting of a contract; it contributed to improving the quality of health care in Poland.

In April 2009, the Law on state aid to territorial self-government bodies for the transformation of hospitals into commercial companies came into force. However, it did not indicate new financial sources from which local governments could cover monetary losses, making commercialization a reality. Some experts had been considering this as direct privatization and, therefore, suggested leaving institutions that would belong to local governments. A further stage in the development of the reform was the adoption of the law on medical care in 2009, which strengthened the rights of patients in the provision of medical care. This law, in particular, introduced the position of mediator for complaints, responsible

for the interests of patients. As a result, the “bottom-up” initiative has strengthened the patient’s position within the health care system [9].

Table 1

Features of the periods of reforming the medical sphere in Poland

Years	Features of periods of medical reform
1989-1997	Significant influence of the political rivalry on the change of directions of reform. Proclaiming an intention to move away from an expensive healthcare model. The government’s concept of extremely cautious changes to create institutions of mixed funding, the gradual introduction of health insurance. Development of health insurance funds as centers of co-payment for medical services. Adoption of the Law on Health Insurance.
1998-2002	Implementation of the Law on Health Insurance. Uncertainty of goals and principles of reform. Reduction of the network of state and communal health care facilities. Rising unemployment of health workers, resistance to reforms. Dissatisfaction of the population with the availability and quality of medical care. Uncontrolled corruption activities of health insurance funds. The decision on the establishment of the State Health Insurance Fund.
2003 – till present time	Creation of the National Insurance Fund, introduction of a model of mixed form of payment for medical services. Accession to EU, implementation of European principles of ensuring the right to health care, support for the development of the health care system by EU grants, achieving significant improvement of state of public health.

Improving health care financing and health reform measures have focused on identifying new sources of income and improving the effectiveness of reform’s efforts. The adoption of the Amendments Act to the Law on Public Health-Funded Health Care in June 2009 introduced the concept of a “positive medical basket of services” (“pozytywny koszyk usług”) into the Polish health care system. The basic purpose of the Law is to compile detailed lists of guaranteed health care services within the public system, which should serve as a source of information for both patients and health care providers.

The basic objectives of the reform in the field of medicine include all aspects of health care management, in particular, such as standardization of services, financing of health care institutions, anti-corruption, etc. Thus, in accordance with the Law “On the Information System in Health Care”, adopted in 2011, the Register of Medical Legal Entities was created as an effective tool for collecting and combining information on the provision of health services, which contains a list of all legal entities involved in therapeutic activities. This law has also established patients’ access to information on completed and planned medical care, as well as the ability to exchange information for diagnostic purposes by sending an electronic request or application [7].

Legislative changes adopted to regulate the process of reforming the Polish medical system have facilitated the transfer of self-government health care facilities, which have acquired the status of economic entities with the possibility of concluding external contracts for services with relevant payers and internal contracts with their own employees. The specified regulations have enabled each

legal entity (individual or legal entity) to be the founder and ensure the activities of medical facilities. Due to these legislative changes, outpatient care was separated from inpatient care, and the payer - from the organizer of medical services. The reform made it possible to strengthen the role of the institute of family doctors, as well as a gradual increase in the structure of health care, the share of cheaper and more effective medical technologies. In addition, due to changes in legislation, the vast majority of types of medical services have been funded through compulsory health insurance through contracts between payers (represented by insurance funds) and health care providers (family doctors, hospitals and ambulance crews)[4].

According to the legal norms, governing the process of health care reform, all levels of self-government have received the appropriate powers in the field of health care. There was also a clear division of powers in the medical sphere between public administration and self-government bodies (Table 2) [2].

It should be noted that almost 99% of all health care facilities in Poland are public institutions and belong to local governments; herewith, only about 30 institutions at the national level are subordinated to the Ministry of Health. The Ministry of Health fully or partially finances at the expense of the state budget only highly specialized medical services such as heart or vascular surgery, organ transplants, etc. In this case, contracts for the provision of such services are concluded between the Ministry of Health and the relevant medical institutions, which can ensure the implementation of appropriate interventions. Funding of other medical services is provided at the expense of compulsory health insurance.

The Law on Compulsory Health Insurance, which entered into force on 1 January 1999, required every Polish citizen to pay a compulsory insurance premium of 7,75% of gross income and offset by a corresponding reduction in income tax. The collected funds are accumulated by the Pension Fund, which distributes them between the 16 fully autonomous regional and 1 departmental compulsory health insurance funds created in accordance with the law. ("health insurance funds" - 16 regional and 1 branch). Each patient has the right to choose one of two possible health insurance funds; the majority usually uses the regional health insurance fund according to the territory of residence of the insured person. The system of compulsory health insurance also covers the cost of medicines, orthopedic products and devices, some preventive vaccinations aimed at immunoprophylaxis of infectious diseases, etc. [7].

With regard to the continuation of medical reform in Poland under modern conditions, it should be noted that currently the reform measures are aimed at achieving the basic goals of the renewed health care system in Poland, namely:

- 1) decentralization of the medical system;
- 2) financing of health care by independent health insurance funds and the National Health Fund;
- 3) development of family medicine;
- 4) introduction of hospital accreditation system.

Table 2

Distribution of powers in the field of medicine between public administration and self-government bodies

Authorities	Powers in the sphere of medicine
State administrations (at the level of voivodships)	<ul style="list-style-type: none"> - maintaining a register of health care facilities in the subordinate territory, making decisions on entering or removing public and non-public institutions from this register; - establishment of public health care facilities in cases set forth by the law on sanitary inspection; - recommendatory assessments of decisions of territorial self-government bodies on liquidation or reorganization of public health care institutions; - appointment of representatives to public councils operating at public health facilities; - control over the activities of health care facilities operating in the voivodship.
Self-government of voivodships	<ul style="list-style-type: none"> - implementation of issues referred to its competence by law, including tasks in the field of health care and promotion; - influence on the activities of the relevant regional fund of compulsory health insurance (health insurance funds) by electing members of the supervisory board of this fund; - performing the function of the founder in relation to public health care institutions (making collective decisions on the establishment, reorganization and liquidation of institutions, appointment of the head and public council of the institution; supervision of the activities of institutions); - ensuring the provision of medical services by other institutions in case of liquidation of a public health care facility; - development of a voivodship's strategy in the field of health care.
Self-government at the county level	<ul style="list-style-type: none"> - implementation of tasks referred to its competence by law, including issues in the field of health care and promotion; - performing the function of the founder in relation to public health care institutions (making collective decisions on the establishment, reorganization and liquidation of institutions, appointment of the head and public council of the institution; supervision of the activities of institutions); - ensuring the provision of medical services by other institutions in case of liquidation of a public health care facility.
Self-government at the gmina level	<ul style="list-style-type: none"> - meeting the common needs of the community, including in the field of health care; - performing the function of the founder in relation to public health care institutions (making collective decisions on the establishment, reorganization and liquidation of institutions, appointment of the head and public council of the institution; supervision of the activities of institutions); - ensuring the provision of medical services by other institutions in case of liquidation of a public health care facility.

The outlined reform measures should be implemented through: improving the information system; increasing the availability of medical care; improving the organization and financing of the inpatient care sector; the fight against corruption

in the health care sector; strengthening the rights of patients; improving the financing system of the health care sector; improving cost recovery mechanisms for health care providers; improving the quality of medical care. The modern health care system of this European country is based primarily on Poland's health care concept "Health for All". This concept includes global priorities for the first two decades of the XXI century and 10 main objectives, which are aimed at creating appropriate conditions for people to achieve and maintain the best level of health. This concept is a social justice program that provides evidence-based guidance and describes a process that leads to a gradual improvement of human health [5].

Currently, measures in accordance with The National Health Programs (NPZs) are being implemented in Poland; they are key documents of the national health strategy for the period 2016-2020. The basic strategic goal of these programs is to prolong the healthy life of citizens in order to improve the quality of life and economic development of the country. This objective is in line with the goals of the state's health policy and the overall development strategy of Poland (DSRK). In addition, in accordance with the World Health Policy set by the World Health Organization, the Ministry of Health, together with the Ministry of Finance, is given more powers to defend the need of investing in human health and his social determinants. Herewith, within the conditions of growing demand for medical services, the medical system should function as efficiently as possible, and the Ministry of Health should ensure a positive return on the funds invested in the medical system [3].

Discussion. The conducted analysis of measures to reform the sphere of medicine in Poland has evidenced that this medical reform in general has both positive and negative aspects. The obvious positive aspects of the reform include, first of all, the separation of earmarked funds for health care from the budget, which helps prevent the negative consequences connected with possible "failures" of the budget. Another positive feature of the reforms is the possibility of ensuring public control over funds in the health care system, as well as the development of this system on a solidary basis, the gradual formation of the market for medical services and improving their quality. In addition, the positive consequences of the reform include the introduction of changes in the stereotype of interaction between patients and health care providers, when the former become more responsible for their own health, and the latter are fully responsible for the quality of care and economically rational use of appropriate financial, material-and-technical, and human resources. Along with this, the introduction of a general drug reimbursement system can be considered a successful experience of Poland, when all drugs, prescribed by doctors in accordance with the approved indications and included in the relevant state list, are covered by the Fund with a certain patient co-payment.

At the same time, there are certain shortcomings of the Polish health care system that Ukraine should take into account during the reform's implementation. Thus, the basic issue of Poland's health care system is its underfunding. This is

connected with the fact that the amount of funds of the National Health Fund at the end of the budget year is constantly decreasing, making it more difficult for patients to sign up for a planned operation at the end of the year. Therefore, for most citizens, receiving the most expensive medical care for free throughout the years remains a ghost, and covering the costs of treatment of many cancers and similar high-cost diseases still falls on the shoulders of Poles.

Another shortcoming is the weak promotion of the reform. The lack of an appropriate information campaign related to the introduction of changes in the medical sector has caused numerous shortcomings and failed to provide timely preparation for the introduction of innovations of various health care participants, especially patients and health care providers, thus leading to low satisfaction with the reform. Along with this, many problems and difficulties are caused by the lack of relevant bylaws at the level of executive power and self-government, the need for which was determined by the Law on compulsory health insurance. An equally important shortcoming of the reform is the unreasonably large autonomy of health insurance funds, which results in a lack of quality approaches to the content and structure of documentation required by health insurance providers. There are also problems, as follows: the lack of universal methods of financing service providers and the principles of determining the cost of medical services and the relevant contracts for their supply; lack of guarantees of equal access to medical services for patients who are insured in different health insurance funds; system of providing “state” medical services, which is limited by the legislative rule of 100% state coverage from the Fund and the prohibition of co-payment; lack of sufficient competition among health care facilities (due to the fact that private medical facilities are not sufficiently actively funded by the Fund); overstatement due to insufficient competition for the cost of certain medical services provided by state providers [2; 7].

It should also be noted that Polish medicine, despite progressive reform measures, also falls under global challenges, such as: - population aging; - increasing patients’ expectations; – innovative treatment technologies, although, they give a better effect and hope to terminally ill patients, however, they require more funding; - electronic medical infrastructure, without which proper ensuring the efficiency of the medical system is impossible, it requires constant investment. All this makes the shortcomings of the Polish medical system particularly noticeable, and at the same time helps identify directions for the next stages of reforms.

Conclusion. The experience of Poland, where compulsory health insurance is currently regulated by law, confirms that state regulation of the system of medical care in the field of health care, which is based on the principle of compulsory state health insurance and medical self-government, is much more effective than state funding of health care facilities. The achieved results of the reform indicate the receipt of the vast majority of positive indicators in the medical sphere. At the same time, it is obvious that Ukraine, which is just at the beginning of medical reforms, needs to adopt a number of examples of Polish medical reform.

Taking into account the measures, already taken to reform the health care system of Ukraine, and the corresponding adopted legislative acts, we can state that a number of problematic issues in the field of medicine still remain. First of all, they concern the system of financing medicine. All aspects of the reform are important, however, domestic medicine has no chance for revival and significant development without a change in the funding system. It is the introduction of the reform of the financing of medical services and the reimbursement of medicines that has given impetus to all the progress, taken place in Polish medicine over the last 20 years. Consequently, the decision formed by the Ukrainian medical reform - not to introduce a new tax on medicine, so as not to stimulate the already highly shadowed economy, and finally to start using the available financial resources of the budget efficiently and transparently - is likely to be reviewed in the near future.

The second important aspect to pay attention to is that during the implementation of the reform in Ukraine one should beware of populism and promises of “free medicine”. The introduction of tax deductions to the health insurance fund in Poland has had a huge positive effect and ensured the real availability of a significant amount of medical care services for the entire population. The proposed shift away from the imitation of free medicine within the framework of the Ukrainian medical reform, the provision of a state-guaranteed level of free medical services, the introduction of co-payments for other services and the expansion of the drug reimbursement system are changes that can bring the system to a new level.

The Law of Ukraine “On State Guarantees in the Field of Health Care” adopted in 2017, which introduced a modern system with a single payer (National Health Service of Ukraine - NHS) and a single national budget with general taxation, can be considered as a positive path to this goal outlined. The implementation of this law provides new methods of financing and preparation for work in the eHealth system [11].

The direction of development of the medical sphere of Ukraine is another general idea, supported by most researchers; it is based on the introduction of insurance medicine and the active involvement of extrabudgetary funds (by providing a legally defined list of paid services, leasing of fixed assets, non-core activities, charitable funds, etc.). This means the transition to a budget-insurance form of financing the sphere. In this context, the development of medical self-government is also relevant, which will expand the capabilities of both doctors and patients in the process of providing and receiving medical services. Herewith, the implementation of reform measures aimed at attracting private health care providers should be implemented only when they really provide better results and / or reduce the cost of providing services of the same quality. In this regard, one of the priorities of the reform is also the formation of a database with information on the quality of service, which is currently absent in Ukraine [8].

Without doubt, the experience of reforming medicine in Poland will make it possible for Ukraine not only to implement these measures, but also to avoid some problems and mistakes. At the same time, it is necessary to take into account the

difference in historical, economic and cultural conditions of the reform in the process of adopting such experience, because each country has its own features that determine the process of reform.

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