Competition Commission gets private healthcare reform ball rolling Elri Voigt: Spotlight, 9 October 2020

A YEAR after the Competition Commission released its Health Market Inquiry (HMI) report, there has been little action in addressing the report's findings. Now, a notice the Competition Commission sent to stakeholders in September suggests there may finally be some movement. The HMI report found the private healthcare sector in South Africa was "neither effective nor competitive", with serious implications for private medical care consumers, and made several recommendations to remedy this. The notice told stakeholders that the Competition Commission had approached the Council for Medical Schemes (CMS) to establish a "multi-stakeholder working committee" for developing the negotiation framework proposed by the HMI. Such a negotiation framework would provide a platform for prices for private healthcare services to be negotiated - potentially helping to bring escalating private healthcare costs under control. The cost of private healthcare has consistently risen at rates above inflation over the past decade. 'Inadequate stewardship'

The Competition Commission's spokesperson, Siyabulela Makunga, said implementing this framework is necessary because, while the private sector has regulatory measures in place, there are several challenges associated with it and, overall, there has been inadequate stewardship of the sector. Makunga said one challenge with the existing framework is that there had been "limited effort to ensure regulatory reviews as required by law and [failure] to hold regulators sufficiently accountable". As a result, he said, the market is neither efficient nor competitive. He confirmed that the Competition Commission has started the process to establish the forum and was engaging with various stakeholders, including the National Department of Health.

There is, however, no specific timeline for implementation. Why private sector regulation has failed The funder side of the private healthcare sector, namely the medical schemes and administrator market, Makunga explained, is regulated through the Medical Schemes Act. But this regulatory framework is incomplete and has distorted the "parameters of competition". He said that on the supply side, there are limited regulations for both practitioners and hospitals, which only relate to the licensing by the provincial departments of health for hospitals, and ethical rules for practitioners by the Health Professions Council of South Africa. There are also no specific regulations in relation to tariff determination and outcomes (quality) monitoring. The HMI report recommended a "staged process, which should commence through voluntary participation using existing forums, including the Health Quality Assurance (HQA), which would set the basis for an organisation that would ultimately interface with the proposed supply-side regulator of health".

In the notice, the commission notes it has "commenced discussions with the HQA as well as the CMS to enable implementation of an outcomes monitoring and reporting framework in line with the above recommendation".

Dr Ntuthuko Bhengu, a member of the HMI panel, said the two biggest "messes" requiring the most urgent attention in the sector include pricing and licensing. There is currently no certainty about the pricing in the private health sector, and this allows for the high costs of care in the sector. Bhengu said there are a lot of out-of-pocket payments and even if one is a member of a medical aid scheme, the financial commitments don't end there. Pricing, or the appropriate tariffs for the private sector to charge for services, used to be determined by the Representative Association of Medical Schemes (RAMS), now known as the Board of Healthcare Funders (BHF), said Bhengu. This ended in 2004 after the Competition Commission found this to be anti-competitive. Not in the interest of patients Every year (RAMS) would get all parties to come and agree on tariffs for the following year. That was

deemed to be in contravention of the Competition Act because people or entities sitting on the same side of the value chain [and] in an unsupervised manner would agree on tariffs, and the concern was that this was not in the interest of the consumers or patients. In the interim, according to the HMI report, the National Health Reference Price List (NHRPL) was established by the CMS, but this also ultimately failed.

According to Alex van den Heever, professor in social security systems administration and management studies at Wits University, the list ultimately failed because the Health Department took over the process.

The CEO of the South African Private Practitioners' Forum (SAPPF), Dr Chris Archer, said the department was taken to court in 2010 for failure to publish the list for that year. The lists from 2007 to 2010 were consequently declared illegal and scrapped. According to the HMI report, no list of tariffs has been published since 2006.

This, said health policy analyst at the South African Medical Association (SAMA), Shelley McGee, caused a vacuum to develop. There is a gap in the tariffs charged by hospitals and practitioners and what medical schemes pay, which often leaves members exposed to high co-payments. Multilateral negotiation forum To improve regulation as it relates to pricing, the HMI proposed a supply-side regulator for health. The purpose of the regulator would be to make sure that pricing is determined legally; that licensing of health facilities is done properly and that value assessments are conducted. This regulator would in theory ultimately be responsible for the negotiation forum mentioned in the stakeholder notice.

Bhengu acknowledged that establishing such a regulator would take time, so the CMS would govern the multilateral negotiation forum in the meantime. However, he cautioned that the HMI is clear that the CMS, as it currently stands, is not the preferred vehicle to oversee the forum in the long-term. The purpose of the forum is to bring certainty around pricing, Bhengu explained, by setting fixed rates for prescribed minimum benefits (PMBs) and a reference tariff list for everything else. Parties would negotiate tariffs transparently by compelling them to get together and submit proposals for tariffs. Once this is decided, he said, the tariffs and reference price list will be published for everyone to see. This, he added, will help consumers know whether they have been overcharged and bring some necessary transparency into the process of pricing. Overall, Bhengu said, the responsibility for the forum lies with the Health Department because it is the task of government to regulate the healthcare sector.

However, an independent, third-party arbitrator will be used if parties disagree. The decision of the arbitrator would be final. This, along with including civil society in the forum, will bring some checks and balances to the independence of the forum.

The CMS has confirmed that it will play a role in the forum.

Will it work?

While the negotiation forum seems good on paper, questions remain on its viability. According to Van den Heever, the forum has potential and could be a viable option that is easy to implement. However, he says it will not solve all the problems in the healthcare market, but merely create an environment that allows for bilateral contracting. Van den Heever is also sceptical about the Health Department's ability to "get it together".

CMS spokesperson Mmatsie Mpshane said that the forum will be effective in bringing down healthcare costs and introducing the price regulation that is currently missing in the industry.

Chairperson of SAMA, Dr Angelique Coetzee, said she is cautiously optimistic about the forum. She said there is a need for a negotiation forum, but the devil is in the detail. If the forum consists of political appointees driving a different agenda than doctors and healthcare workers, Coetzee said, it might risk being stuck in political turmoil, not adding anything to better patient outcomes.

Concerns about representation

McGee said the association agreed with the HMI findings relating to pricing and the need for the forum, but there are concerns around representation on the forum. She said the challenge is that such a forum will still be unbalanced in the hospitals' and funders' favour because of how concentrated these markets are versus the practitioner groups.

The SAPPF also agreed with the HMI's findings. Chris Archer and the deputy CEO of SAPPF, Dr Simon Strachan, said they had, in November 2019, made clear their willingness to implement as many of the recommendations as possible. They said that they had been aware of the issues with regulation in the sector for years and had come up with an approach that sought to remedy the situation, called the South African Classification of Health Care Interventions (SACHI). They plan on using the approach in order to self-regulate in an attempt to be proactive instead of reactive, said Archer.

How will this impact on medical scheme members?

Makunga said better regulation of pricing in the private sector could potentially result in consumers of private healthcare services paying less and receiving more value for their money. He said it is expected that competitive prices should minimise costs in the health system, which would translate to lower medical scheme premiums for members.