Proposed changes tabled by the South African Competition Commission

On Thursday, 5 July 2018, the Competition Commission of South Africa (Commission) published its provisional findings and recommendations (the Provisional Report) in respect of the Health Market Inquiry (HMI).

The HMI commenced on 6 January 2014, following the publication of the *Terms of Reference for Market Inquiry into the Private Health care Sector* on 29 November 2013.

The HMI is focused primarily on determining the factors that presently, distort and lessen competition in the private health care sector, which encompasses numerous interrelated markets, and is aimed at improving competition and increasing transparency to allow for value purchasing.

The Commission has been tasked to make recommendations that support the achievement of accessible, affordable, high quality and innovative private health care in South Africa, and following the publication of the Provisional Report, has requested that stakeholders engage with them and make submissions in relation to the Provisional Report by 7 September 2018.

Once finalised, the Commission's recommendations are expected to have far-reaching implications for all stakeholders including health care practitioners, health care establishments, businesses in the pharmaceutical and medical devices industries, health care funders, medical scheme members as well as industry and statutory bodies.
The Commission's key findings include the following:

**Practitioners**
- Medical practitioners drive much of the health care expenditure in the sector.
- "Fee-for-Service" models of remuneration tend to stimulate oversupply, which is perceived to result in wasteful expenditure and incentivises practitioners to provide more services than may be required (referred to as "supply-induced demand"), and which is further exacerbated by the current unregulated pricing environment.
- The ethical rules of the Health Professions Council of South Africa (Ethical Rules) are cited as the reason for lack of innovation in models of care and development of alternative reimbursement models.
- Intrinsic and extrinsic incentives in the private health care market have promoted over-servicing by medical practitioners, including increased admissions to hospitals, increased lengths of stay, higher levels of care, greater intensity of care or use of more expensive modalities of care than can be explained with reference to the disease burden of the population.

**Funders**
- Consumers cannot properly compare or choose medical schemes and plan options, and on the basis of value-for-money.
- The deliberate manner in which these medical scheme offerings are bundled, packaged and priced, tend to allow for medical schemes to weaken and avoid outright price competition.
- Medical schemes, and their administrators, are not sufficiently effective in leveraging their "buying power" to negotiate contracts that would decisively benefit consumers, by improving quality of care and achieve savings in premiums and reduced out of pocket expenditure.

**Facilities**
- Three of the South African private health care hospital groups hold a combined market share of 83%, in terms of the total number of beds, and around 90%, in terms of the total number of admissions.
- The health care facility licensing process has been found to be inconsistently applied by the various provincial Departments of Health, and which results in very negative consequences for all affected stakeholders.

**Information asymmetry**
- There is no publicly available data regarding the cost-effectiveness of various technologies, and no guidance on what technologies may benefit health outcomes.
- A key problem underlying the high and continuously rising costs of care and medical scheme contributions is overcapacity and over-investment in technology, higher treatment
The Commission's key recommendations include the following:

**Practitioners**
- The implementation of a standardised coding system, to be utilised across the health care sector, and to facilitate meaningful sharing of information.
- Greater transparency in the selection of designated service providers (DSP) to be on medical scheme networks. In particular, the HMI recommends that DSP partners should be appointed, for a period not exceeding two years, and once an open tender process has been undertaken.
- A review of the Ethical Rules, and to the extent that the rules have an adverse effect on competition.

**Funders**
- Medical scheme options must be simplified by introducing a standardised base benefit option that covers catastrophic expenditure as well as out-of-hospital preventative and primary care.
- Various recommendations have been made to improve the governance of medical schemes and to ensure that schemes act in the interest of members by holding administrators to account.

**Facilities**
- Having to obtain a Certificate of Need prior to establishing, constructing, modifying or acquiring a health care facility, and as provided for in the National Health Act.
- The adoption of a new national licensing framework in respect of health care facilities, and to replace the current fragmented provincial licensing framework.

**Regulatory**
- The formulation of comprehensive regulations in respect of health care capacity planning, economic value assessments, payment mechanisms and various assessments (outcome measurement, registration, and reporting).
- The establishment of a dedicated health care regulatory authority, styled as the “Supply Side Regulator of Health care” (New Regulator), which will:
  - Manage practice code numbering, which is currently managed by the Board of Health care Funders of Southern Africa.
  - The adoption of set tariffs, which may be determined by the New Regulator, and
after extensive consultation with stakeholders, alternatively, such tariffs may be adopted as a result of a multilateral price-setting mechanism, whereby stakeholders conduct tariff negotiations between themselves and within the framework determined by the New Regulator.

General
- Tariffs for Prescribed Minimum Benefits (PMB) to be binding, and that tariffs for non-PMB conditions have the status of reference tariffs.

The Commission has indicated that many of its recommendations are already provided for in current legislation, but have not been implemented and/or enforced. Furthermore, the Commission has criticised the National Department of Health for its inadequate stewardship of the private health care sector.

It is uncertain what the National Ministry of Health's position is in respect of the Provisional Report and particularly in light of the recently published draft National Health Insurance Bill and the draft Medical Schemes Amendment Bill.

Going forward, we expect that the Commission's recommendations will materially influence the continued debate regarding the future regulatory structure of both the private and public health care sectors in South Africa.

It is therefore important that all stakeholders consider the potential impact that the draft National Health Insurance Bill, the draft Medical Schemes Amendment Bill and the Provisional Report may have on their interests and/or businesses, and with the view of ensuring that positive steps are taken to contribute to the changing private (and public) health care landscape.

Contacts