

Competition to attract patients between healthcare providers in Abu Dhabi

Andrea Tithecott - Partner, Head of Regulatory and Healthcare - Commercial / Regulatory / Legislative Drafting / Sustainability focused Corporate Governance / Sustainable Finance / Sustainable Business / Sustainable Sourcing / Climate Change & Energy Transition
a.tithecott@tamimi.com - Abu Dhabi

February 2014

The competition between providers to attract patients is fierce and should be handled appropriately by providers to ensure that there are no breaches of the law. This article considers the legal and regulatory framework that is presently in place to regulate the healthcare industry in Abu Dhabi.

Legal duties

The primary legal principles at play include:

- Federal Guidance of 1988 Code of Conduct of Ministry of Health (“Code of Conduct”);
- Law No. (1) of 2007 establishing the Health Authority-Abu Dhabi (“HAAD”) and (“Health Regulations”);
- HAAD Patient Rights and Responsibilities Policy (“Policy”); and
- HAAD Healthcare Regulator Policy Manual: Chapter IX complaints, investigations, regulatory action and sanctions (“Regulator Manual”).

Abu Dhabi first introduced mandatory health insurance in 2005 following the implementation of Law No. (23) of 2005 regarding the health insurance scheme (“Scheme”). Since the Scheme was put in place, employers and sponsors have been obliged by law to provide health insurance to employees and their families. Insurance is compulsory for all employees, their spouses and up to three children up to the age of 18, as long as they live in the emirate. Around this requirement, has grown a system of health provider contacts and computerised claims systems to enable patients’ insurance claims to be processed.

HAAD introduced a standard provider contract (“Contract”) in 2012, requiring all contracts between insurers and providers to meet minimum standard terms and conditions. The Contract includes the terms upon which the provider receives payment for providing healthcare services, including inpatient, outpatient, day care, home care, and medicine, which is mandated by law. Uninsured treatment may be provided on a self-pay basis. Insurance payments are the subject of a mandatory tariff, which dictates the price paid for basic services. The tariff is set by HAAD and was last updated following the publication of Health Insurance Periodical No. 49 in August 2012 which required all providers to move over to the standard Contract and revise their treatment price-lists in accordance with the mandatory tariffs. The mandatory tariff enables healthcare providers to assess the income generation from all covered patient groups, to assess patient group types which are commercially attractive, and plan business models accordingly.

Competition for patients

Initiatives to attract patients to a particular healthcare provider must be legally compliant in order to avoid inadvertent breach of existing laws. Health ‘campaigns’ are subject to regulatory approval by virtue of Ministerial Resolution No. (430) of 2007 concerning the regulation of health advertisement and includes advertisement of the healthcare provider and any individual practitioners.

All healthcare providers in Abu Dhabi are licensed by HAAD Health Regulations, and may only carry out those activities for which they have HAAD approval. Healthcare providers should ensure that they only carry out licensed activities. For example, a provider of ground based ambulance services would not be able to provide air ambulance services unless this activity was stated on the licence, notwithstanding that the treatment type was effectively the same.

Hospital patients, who are to be discharged for continuing care at home, usually have a choice of home-care providers. In such cases, the choice of provider should be a multi-party decision, made in accordance with HAAD policy standards, with the full involvement of the patient, and a coordinated discharge made in the best interests of the patient to the most appropriately qualified provider. During the course of negotiations, the patient may discuss his/her requirements with two or more providers before making a decision. Healthcare providers in these situations should be very careful to respect the right of the patient to privacy and confidentiality over the sharing of medical information and should not put the patient under pressure to choose one provider over another. Neither should a provider make inappropriate contact with a patient, or members of their family, by using personal contact information sourced through access to medical records, or through surreptitious slur campaigns against competitor providers. Any inappropriate activity of this sort is a breach of the Code of Conduct and legislation in place to protect the privacy of individuals.

Individual healthcare providers who accept positions with new healthcare providers should be alert to the continuing duty of confidentiality. All employees are under a duty to maintain the confidential information of their employer. This duty continues while the person is employed and extends to the period after the employee has left the employment. Accordingly, information which has come into the possession of an individual while in the course of employment for the first healthcare provider, may not be shared with the second healthcare provider as a matter of compliance with labour law. Furthermore, the sharing and/or use of the information beyond the context in which it was originally obtained with the first healthcare provider would constitute a breach of privacy.

HAAD Policy mandates that all health care facilities should safeguard and preserve patients' rights during the course of clinical care and other services provided to the patient. All patients are entitled to be informed about their rights in a manner that they can understand. All clinical and pharmaceutical records must be kept fully updated and relevant information fully documented and personal details and records kept fully confidential and protected from loss and misuse. In addition to breaches of labour laws and privacy laws, any actions taken by healthcare providers which fall outside the boundaries set by HAAD would trigger a non-compliance, both by the corporate healthcare provider where they were complicit in the breach, or by omission to prevent the breach, together with the individual healthcare provider.

HAAD powers of investigation

HAAD are under a legal duty to implement, supervise, monitor and enforce the Health Regulations. This includes a duty to investigate the activities and behaviour of regulated healthcare organisations and individual professionals which may have fallen below the required legal or ethical standards.

The Code of Conduct establishes the minimum threshold of professional behaviour required of the healthcare profession. Where an employee of a healthcare provider is in breach of the Code of Conduct, HAAD is under a duty to investigate the behaviour pursuant to power under Article 4(2) and 5(13) Health Regulations, and take action as appropriate. Such action may include conditions or removal of the employee's professional license, or a recommendation that a healthcare provider undertakes a disciplinary investigation into the behaviour of administrative staff who are not captured by the professional licensing regime.

Where a health provider is in breach of Health Regulations, or a complaint or report is made which would merit an investigation, HAAD has power to carry out an investigation of the activities of a healthcare provider. The Regulatory Manual provides that each member of the healthcare provider staff must assist

and co-operate with the investigation. Senior members of the healthcare provider, including the members of its board of directors must make themselves available to HAAD upon request to assist with the investigation.

HAAD is empowered to conclude an investigation and impose one or more of the following penalties: issue a report, make recommendations, issue information centure or warning, refer a matter to the disciplinary or licensing committee, direct that a regulated person compile a compliance plan, and/or issue a precautionary order.

Sanctions and penalties imposed on healthcare providers and individual practitioners can do untold damage to the corporate brand and its personal reputations. Many patients' are guided in their healthcare decisions by the good reputation of a provider or individual. As set out in this article, there is a real onus upon the healthcare industry to act in a compliant fashion and maintain the highest of professional standards in the search to attract new patients.