Incentive payments in the healthcare sector: A regional and UAE overview

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Some governments have provided assistance to private providers, primarily by engaging them to manage public facilities and reimbursing them for treating government-funded or insured patients. Generous cash incentives and a guaranteed supply of patients have been offered to top-rated international teaching hospitals, the aim of which is to ensure that reputable and well recognised provider brands will create competition and raise standards of care throughout the region.

Competition in the healthcare market must be properly regulated to ensure that public or insurer funds are appropriately spent and that the opportunity for corrupt practices is extinguished. It is impractical, for example, to guarantee a certain volume of patients for all private providers, as such guarantees are costly and reduce the incentive for providers to raise their quality and compete for patients. Since most private providers compete with public facilities to attract patients, governments must create a fair system in which both public and private healthcare providers issue claims and receive appropriate reimbursement for their services.

Incentive payments for healthcare services

It is reported that a practice has evolved across the region in which, following reimbursement by an insurer to a laboratory or diagnostic imaging center, the service provider pays a percentage of its fee back to the hospital or clinic requesting the service. Such payments are typically described as a referral fee, or commission fee, or 'kickback'.

The practice of paying kickbacks is incompatible with the laws of most established international jurisdictions. For example in the United States, federal anti-kickback laws and the 'Stark' laws have curtailed the practice of commission payments and self-referral, where the referring physician is found to be referring patients to another facility in which that physician has a personal financial interest. In the UK, the government is consulting with the healthcare sector with a view to introducing the 'NHS National Tariff Payment System' which will regulate how hospitals and providers are paid. Private providers must sign-up for the scheme, agree to be regulated, and provide undertakings.

In the UAE, the Emirates of Abu Dhabi and Dubai have introduced mandatory insurance schemes to fund healthcare services (Abu Dhabi Law No.23 of 2005 and Dubai Health Insurance Law No.11 of 2013, respectively). Reimbursement controls are in place. In Abu Dhabi, the Health Authority-Abu Dhabi (HAAD) has introduced a policy on health insurance fraud and abuse which states that kickbacks are to be regarded as health insurance fraud. In addition, HAAD has introduced a standard provider contract requiring all contracts between insurers and providers to meet minimum standard terms and conditions. It is a condition of such contracts that reimbursement of healthcare fees are made in accordance with a mandatory tariff, which dictates the price paid for basic services. Together these measures should stop the practice of insurance payments being used to pay commissions or kickbacks between providers.

In an attempt to curb such practices, HAAD issued Circular (DG 16/14) on 1 May 2014 relating to

‘Kickbacks in Medical Laboratory Services’ requiring compliance with mandatory local insurance laws, and Federal Law No. 10 of 2008 concerning Medical Liability, and prohibiting the payment of “commissions and financial incentives or making illegal profits” when referring patients for medical tests. This was quickly followed by a local insurer requiring that providers sign an ‘Anti-Incentives Undertaking Letter’ that they will ensure strict compliance with the contractual requirements of the contract together with an undertaking that no volume incentives or commissions are being paid for ordering services. Violation of the undertaking will constitute a material breach of the contract in respect of which the insurer will take any necessary legal action, including termination of the contract and reporting of the facility to HAAD. If this approach is successful, other healthcare insurers across the region are likely to require providers in their locality to give similar undertakings.

Efforts to curb kickback payments are likely to have the most significant impact on the smaller secondary care private providers, such as those providing medical laboratory services or specialist diagnostic imaging centers, which generate much of their revenue from the larger hospitals or clinics proving primary care services and rely on receiving a certain volume of business from those primary providers. One way of securing referrals is to pay kickbacks, so if this practice is no longer permitted providers will need to compete for business by being more creative, and offering commercially attractive reasons for using their services, developing closer business relationships with primary care providers, and entering into service contracts securing exclusivity of referrals.

Incentive payments in the pharmaceutical sector

The pharmaceutical industry has recently come under scrutiny once again for the practice of offering bribes. GlaxoSmithKline was recently fined $489 million for corruption in China and is now looking into allegations of corruption in the United Arab Emirates.

New entrants to the GCC pharmaceutical market should familiarise themselves with high-level policy initiatives currently under discussion at the Council of Ministers of Health at the GCC which will control the prices and discounts which may be offered on medicines. A mechanism to standardise medicine prices in member countries of the GCC is expected to be implemented in stages over the next four years, and which will be aimed at reducing and maintaining uniform prices of medicines and profit margins.

The UAE was one of the first GCC countries to introduce price controls for medicines. Article 64 of Federal Law No. 4 of 1983 concerning the Profession of Pharmacy and Pharmaceutical Institutions, prescribes controls over the price of medicines and pharmaceutical preparations, and regulates the payment process between all parts of the payment chain, from distributor through to patient. Ministerial Resolution No. 834 of 2008 clarified how to calculate drug prices, and Ministerial Resolution No. 171 of 2011 regulates the profit margins of distributors and pharmacies, and prohibits the offer of bonuses or discounts other than in accordance with the fixed margins. All commissions, incentives or any offer of a financial benefit are subject to these regulations, which are strictly enforced.

Conclusion

The region’s population is expected to exceed 50 million by 2020, which will increase consumption of healthcare services. The GCC healthcare market is expected to grow at the rate of 12% per annum to meet the demand, with outpatient markets expected to account for 79% of overall market-share. The demand for healthcare services will create scope for increased insurance penetration, and in order that costs remain affordable, extinguishing corrupt claims and reimbursement practices will become a priority. The GCC countries are tackling the regional issue of corruption, having all become signatories to the United Nations Convention against Corruption (UNCAC).

In the UAE, Federal Decree No. 8 of 2006 implements UNCAC, and a new federal anti-corruption law aimed at curbing misappropriation of public money is currently awaiting implementation. Bribery is governed by Federal Law No. 3 of 1987 (the Penal Code), and in Dubai, local laws have been introduced governing the recovery of public and private monies obtained illegally. The combination of regional pressure, coupled

with local law and health policy, has created a barrier to corrupt practices in general, and the practice of paying kickbacks specifically, and requires that providers act in accordance with sound legal and ethical principles when competing for their share of the healthcare market.