

The Straits Times (Singapore)

December 15, 2017 Friday

## **Medical fee guidelines - a case of full circle'; Benchmarks are to be introduced next year, a decade after an industry body withdrew its guidelines amid anti-competition concerns. What makes things different this time'**

**BYLINE:** Kala Anandarajah and Joshua Seet For The Straits Times

**SECTION:** OPINION

**LENGTH:** 1027 words

The issue of adopting medical fee guidelines has caused much discussion in the decade since the Singapore Medical Association (SMA) first decided to withdraw its guideline on fees for doctors in private practice (GOF) in 2007. It did so due to concerns that the guideline would breach Singapore's Competition Act.

Following a 11/2-year-long review, the Competition Commission of Singapore (CCS) confirmed that the GOF had the effect of restricting competition within Singapore because it created focal points for prices to converge and restricted independent pricing decisions. The SMA's appeal to the Ministry of Trade and Industry, to exclude the GOF from the Competition Act, was also rejected.

With its demise, and following rumblings about the lack of fee transparency in relation to medical clinics, the Ministry of Health (MOH) issued new guidelines advising medical clinics to display common charges within the clinic, and to provide itemised bills.

Amid these developments, there continued to be calls for fee guidelines, and various suggestions were proposed on how they could be restructured to comply with competition laws.

The case of Dr Susan Lim revived calls for fee guidelines to be reintroduced. The surgeon was suspended for three years and fined \$10,000 for unprofessional conduct in relation to the fees she had charged a patient, the sister of the Queen of Brunei, who died of cancer in 2007.

More recently, Minister of State for Health Lam Pin Min noted that an average of 160 complaints of overcharging had been received annually in 2015 and last year against healthcare institutions.

In the past two years, the pendulum has swung in favour of fee guidelines.

Last year, the Health Insurance Task Force (HITF), which was formed to evaluate the issue of increasing health insurance premiums, recommended reintroducing medical fee benchmarks or guidelines to improve transparency of medical costs and to address overcharging. On reviewing the HITF's recommendations, MOH has now stated that it will introduce a set of medical professional fee benchmarks next year.

The immediate question that springs to mind is: What makes the MOH fee benchmark different from the GOF such that it raises fewer competition concerns? Does competition law now sanction that which it had previously prohibited?

There are several key differences.

First, the GOF was set by a trade association, the SMA. A committee within the SMA was responsible for arriving at the recommended fees, with feedback from SMA members. While views were also sought from special interest groups of various hospitals, and the Law Society of Singapore, no organisation representing consumer or patient interests made any contribution to the GOF.

The CCS concluded that there was an inherent conflict of interest for the SMA to set the GOF, and that it "may have been fashioned with a degree of self-interest".

In contrast, the MOH fee benchmark will be set by MOH itself, which Health Minister Gan Kim Yong has noted is independent of medical service providers. While doctors would invariably be providing input to MOH when it decides on the fee benchmark, MOH's independence would mitigate concern that the fees could be unfairly inflated.

Second, the GOF was not based on actual price data. The CCS found that the fee range was derived based on the professional fees stated by SMA members rather than on actual prices charged or on costs incurred. Instead of reflecting market prices, the GOF recommended what the SMA members thought prices should be.

The HITF has now recommended in its 2016 report that the fee benchmark should be designed "having regard to empirical data", and asks for an independent body to collate data from government, private hospitals and insurers.

As the MOH fee benchmark is expected to be grounded on actual price data, this fee benchmark is likely to be closer to MOH's current practice of publishing actual hospital charges, instead of a platform for pushing prices that the industry considers appropriate.

Third, although the GOF was stated to be a voluntary recommendation, the CCS noted that the SMA had a mechanism in place to foster compliance with the recommendations via the SMA Ethics Committee, which dealt with complaints of overcharging.

In this case, MOH has stated that its fee benchmark will be voluntary, and there is no indication that MOH would compel doctors to follow the benchmark.

But even if MOH compelled doctors, its act will not be deemed a violation as the Competition Act exempts activities carried out by the Government.

Accordingly, as an act of a government ministry, the MOH fee benchmark is exempted from the prohibitions of the Competition Act.

14/06/2018

However, if the voluntary nature of the MOH fee benchmark is internally policed (say by the SMA through its ethics committee), or where there is informal pressure among doctors to charge within the fee benchmark, then despite being an MOH initiative, violation will be found.

This is because if such concerns materialise, the intensity of competition in the market may be reduced after the MOH fee benchmark is published, and the cover of the exemption will no longer be available.

The MOH fee benchmark is a welcome development. It helps bridge the information asymmetry between healthcare providers and their customers, and allows patients and insurers to better detect overcharging practices.

However, the MOH fee benchmark cannot be taken as an indication that all forms of fee guidelines are now sanctioned under Singapore's competition laws.

Companies and professionals in other sectors should not think that it is now permissible to come together, or use their industry association, to introduce fee guidelines for their sector.

The MOH fee benchmark is less restrictive of competition because it is set by a government ministry, and is expected to be based on actual price data. This differs from a situation where competitors in the same industry come together to collectively decide on a fee guideline, which would likely remain problematic under the Competition Act.

· The writers are lawyers at Rajah & Tann Singapore LLP's competition and trade practice group.

**LOAD-DATE:** December 14, 2017

**LANGUAGE:** ENGLISH

**PUBLICATION-TYPE:** Newspaper

Copyright 2017 Singapore Press Holdings Limited  
All Rights Reserved