Regional Network for Equity in Health in East and Southern Africa
EQUINET

Policy Series No. 35

Regulating the for-profit private health sector in East and Southern Africa

While the private sector contributes new resources to the health system, international evidence shows that if left unregulated it may distort the quantity, distribution and quality of health services, and lead to anti-competitive behaviour. As the for-profit private sector is expanding in east and southern African (ESA) countries, governments need to strengthen their regulation of the sector to align it to national health system objectives. This policy brief examines how existing laws in the region address the quantity, quality, distribution and price of private health care services, based on evidence made available from desk review and in-country experts. It proposes areas for strengthening the regulation of individual health care practitioners, private facilities and health insurers.

Co-published by EQUINET, University of Cape Town Health Economics Unit and TARSC with WEMOS Foundation

Challenges in regulating a growing private health sector

The for-profit private sector is being promoted in Africa as one option to address shortfalls in the public health system. There are signs that the sector is expanding in ESA countries: There are new domestic, regional and international investors, governments and external funders have started to subsidise for-profit health care businesses, and bank loans are becoming more readily available to private practitioners in some countries. The private health sector is mixed, ranging from widely dispersed single-proprietor facilities to large hospitals and from well-established to new entrants in voluntary health insurance.

While some of these businesses make a valuable contribution to the health system, some distort the nature and coverage of health care and draw skilled health workers out of the public sector. Practices such as combining services, pharmacies and insurers in one company can restrict fair competition in the sector, leading to rising prices. They can also create powerful alliances that thwart efforts at increased regulation.

This has repercussions for the affordability and quality of care available to the general population. It is therefore important that governments establish effective laws to regulate the private health sector and align them with national goals, and also strengthen their capacity to enforce these laws.

Existing laws are limited

We were able to get comprehensive information from eight countries, that is Botswana, Kenya, Namibia, South Africa, Tanzania, Uganda, Zambia and Zimbabwe. Specific findings on the laws in each of the 16 ESA countries are presented in EQUINET discussion paper 99 found at www.equinetafrica.org.

While ESA countries have laws governing the private sector, they do not cover all the areas necessary for regulation of the sector. Except for Namibia, South Africa and Zimbabwe, where there is specific health insurance regulation, most of the laws are focused on controlling the entry of health professionals and health service organisations into the market through registration and licensing. Generally the type and quality of services provided by private practitioners, clinic chains and private hospitals is not well regulated, and patient rights are not well-protected.

The findings are summarised in Tables 1 to 4, where the degree to which existing laws in the eight ESA countries address the specific national health system objective shown is presented in the coloured cells, with:

- "green" meaning that laws exist in almost all the eight ESA countries;
- "orange" meaning about half of the countries have laws covering this; and
- "red" meaning that no, or very few, countries have laws covering this area.

October 2013

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Table 1: Laws governing health professionals

Area of regulation	Health system objective	Extent to which laws exist
License to practice	Maintaining quality	
License to work in the private sector	Controlling volume of professionals	
Incentives/restrictions regarding location	Controlling distribution (encouraging rural practice, preventing over-supply)	
Sanctions for poor behaviour/practice	Maintaining quality	
Continuing education	Maintaining quality	
Ceiling on fees	Ensuring affordability	

Table 2: Laws governing private hospital and clinic facilities*

Area of regulation	Health system objective	Service type	Extent to which laws exist
License to enter health care market	Maintaining quality Controlling volume of facilities	Private hospitals	
		Private clinics	
License to enter private health care market	Controlling volume of facilities	Private hospitals	
		Private clinics	
Certificate of need	Controlling distribution-encouraging rural practice, preventing over-supply	Private hospitals	
		Private clinics	
Monitoring of quality of care criteria	Maintaining quality	Private hospitals	
		Private clinics	
Reporting requirements	Maintaining quality	Private hospitals	
		Private clinics	
Ceiling on prices	Ensuring affordability	Private hospitals	
		Private clinics	

(*) The blue shading shows private hospitals and unshaded private clinics

As shown in Table 3, most countries do not adequately regulate health insurers.

Table 3: Laws governing health insurers

Area of regulation	Health system objective	Extent to which laws exist
License to operate as an insurer	Maintaining quality; Controlling volume	
License to operate specifically as an health insurer	Maintaining quality; Controlling volume	
Standardised minimum benefits	Extending coverage and equity	
Solvency requirements tailored to health insurance risks	Ensuring sustainability	
Reporting of important information relating to health insurance	Maintaining quality	
Price ceilings	Ensuring affordability	

Where health insurers are regulated under general insurance legislation, there are few provisions dealing with the peculiarities of the health care market, such as the exclusion of high-risk beneficiaries or loading of their premiums. Comprehensive benefit packages are generally not protected. Even where there are specific laws governing health insurance, the provisions do not cover all these areas of concern or protect schemes from having their surpluses stripped through unethical practices. Some interventions against anti-competitive behaviour have focused on health insurers but have not tackled private provider behaviours that are a major cause of cost escalation.

Table 4 shows that there is almost no legislation that guards against anti-competitive behaviour in the health care market. This, together with the fact that the fees charged by providers and health insurance administrators are not controlled to any meaningful extent in any of the eight ESA countries means that the for-profit private sector is likely to be an increasingly unaffordable option for all but the wealthiest. The creation of Competition Commissions in most countries provides a new opportunity to control unfair practises and address this cost escalation, provided that national health system objectives are well-understood by the commissioners.

As a positive trend several ESA countries are now beginning to update and improve their laws regulating the private health sector although, in most cases, without the benefit of an overarching policy guideline on the private sector.

Table 4: Laws governing the health care market

Area of regulation	Health system objective	Extent to which laws exist
Health-sector specific		
Pertaining to health professionals	Maintaining quality; Controlling costs	
Pertaining to private hospitals	Maintaining quality; Controlling costs	
Pertaining to private clinics	Maintaining quality; Controlling costs	
Pertaining to health insurers	Maintaining quality; Ensuring sustainability	
Pertaining to the general economy		
Competition law	Maintaining quality; Controlling costs; Ensuring sustainability	

Existing laws are not well enforced

Enforcement is a major challenge. Some countries have reported that despite having legislation and regulatory authorities, some health professionals practice without licenses and operate unregistered facilities. Further, inspection of facilities is sometimes superficial or absent. Health insurers sometimes flout the spirit and even the letter of the law, especially with respect to tax avoidance, sustainability provisions, surplus-stripping and restricting consumer choice and access. There is emerging evidence of anti-competitive behaviour by hospital chains and health insurers in some countries. These findings are detailed in EQUINET discussion paper 99.

Actions government can take to protect the health system

The current situation suggests that governments and other policy makers need to strengthen their policies, regulatory frameworks and laws and their enforcement capacities in relation to private health care provision and insurance. Some steps can be taken regardless of whether there are mandatory prepayment policies, but

others will be easier to achieve under a mandatory prepayment system (through tax financing or mandatory national insurance).

Governments in dialogue with key health sector stakeholders can:

- **Develop in-country capacities** to evaluate the laws affecting the private health sector against public health and other objectives, drawing on public health, legal and financial skills.
- **Develop an overarching policy on the private sector** to clarify regulatory goals and develop laws. In doing this, governments can clearly distinguish the roles of different stakeholders, ensuring a clear separation between funders, purchasers and providers, and ensure that ministries of finance understand the public health objectives of this policy.
- **Rationalise, harmonise and strengthen regulators**, ensuring that the legal requirements of multiple pieces of legislation are well understood by both regulators and the industry. While 'self-regulation' – where peers essentially scrutinise one another's behaviour – can be effective where enforcement capacity and codes of conduct are strong, these benefits can be overridden by economic incentives and professional interests.
- **Address important gaps in the law,** especially with respect to the quality of health services. This calls for detailed guidelines for primary care, hospital care and emergency services and for measures to address the root causes of excessive cost escalation. For this, states may need to investigate the conduct of health insurers, and the extent of risk rating, limitations on benefit packages, fragmentation of risk pools and adequacy of reserves, and investigate the pricing of services by providers.
- **Strengthen and implement sanctions and incentives**, setting them at appropriate levels.
- **Strengthen monitoring systems** and create and maintain appropriate databases. The law needs to cover the information collection and reporting obligations of the private sector, with penalties for their breach. States need to ensure capacities to enforce these reporting obligations and to use and act on the information.
- **Develop the capacity to enforce legislation**, including adequate and timely inspections and renewal of certificates.
- **Investigate and act against anti-competitive behaviour.**

Governments should not underestimate the power of the private sector to resist increased regulation and will need technical capacities, robust strategies and alliances to advance regulatory reform. Regulation is not the only route for aligning the private sector to national goals, and states can develop incentives such as reimbursement mechanisms that also help shift the behaviour of the private health sector.

References and resources

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Produced with support from IDRC Canada and Wemos Foundation (The Netherlands)
Cite as: Doherty J (2013) Legislation on the for-profit private health sector in East and Southern Africa. EQUINET, with UCT HEU, TARSC. Wemos Foundation Policy brief 35, EQUINET, Harare
Contact EQUINET at Secretariat, c/o TARSC Box CY2720, Causeway, Harare
email: admin@equinetafrica.org, www.equinetafrica.org