

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Designing publicly funded healthcare markets – Note by Romania****26 November 2018**

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More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/designing-publicly-funded-healthcare-markets.htm>

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Romania

1. Short overview of the Romanian health system

1. On the Romanian market, Ministry of Health is the central administrative authority in the health sector responsible for the management stewardship of the system and for its regulatory framework. The other key actor at the central level is the National Health Insurance House (NHIH), which administrates and regulates the social health insurance system and the national health insurance fund (NHIF).
2. Health system in Romania is theoretically based on the same generous principles as in other European countries – universal and fair access to health care. However, the system is in constant competition for allocations from the state budget. Currently, Romania spends between 4-5% of its GDP on health.
3. Romania's healthcare system is based on a compulsory health insurance scheme that covers all contributing residents. The insured population is entitled to a standard benefits package, which includes healthcare services, pharmaceuticals and medical devices. Co-payments apply mainly to pharmaceuticals. Where generics are available, patients must pay extra if they wish to access an equivalent but more expensive product (innovative products). These co-payments, as well as parallel trade in Romania, lead to a high share of out-of-pocket spending on pharmaceuticals
4. Government reforms focus on efficiency gains and shifting expenditure away from inpatient care and towards primary care.
5. Romania has not yet developed a private health insurance system, one of the reasons being the broad coverage offered by the public health insurance system. NHIH contracts healthcare services both from public and private - for - profit providers according to the rules, established in the Framework Contract agreed by the Ministry of Health and approved by the government.
6. A mix of methods is used to pay suppliers from NHIF. Primary ambulatory care is paid on the basis of a mixed pay per capita and pay per service system. Specialized ambulatory care is paid for each service. Inpatient care is covered by the hospital financing formula, most of the hospitals being paid based on DRG system. Payments on the basis of DRG's imply that different hospitals are paid similar prices for similar services.
7. According to the legislative framework, healthcare services contracted by NHIH are reimbursed on the basis of the same calculation formulas, valid for all the providers, regardless of the form of ownership, whether public or private.
8. In Romania, the inpatient care is still the most important category of healthcare, in terms of financial resources consumed. Currently, payments to hospitals for inpatient care account for approximately 40% of total public healthcare expenditures.
9. In terms of the number of publicly contracted beds, the share of public vs. private suppliers is 95% -5%.

¹ Diagnosis Related Group

10. The comparison between public / private providers in terms of the value of publicly paid services illustrates the high addressability of public providers, with private providers accessing fewer than 5% of NHIF for hospital care in 2015 and 2016.

11. Other outpatient services, such as imagistic services, are mainly provided by private suppliers under contracts with NHIH.

12. Public hospitals are organized as public institutions. The defining feature of the public hospital is institutional and financial autonomy, the management of hospitals having the responsibility to take decisions related to activity, based on principles of economic efficiency. The essence of public hospitals' financial autonomy is to support expenditure by income earned from its own activity.

13. In case of public hospitals, contracts with NHIH are the main source of funding for the operating costs while financing of capital investments (building, expanding and modifying of hospitals, also including investment in equipment) is provided mainly from public budgets. The costs of personnel, which represent around 60% of total operating cost, is determined centrally, medical employed staff having the statute of civil servants.

14. In case of private hospitals, their revenue mix is formed on average from a percentage of approx. 25% income from contracts with NHIH and a percentage of approx. 75% from the private market.

2. Enforcement of competition law – actions against administrative acts of public authorities

15. At the end of 2015, the government decided to raise health wages in the public sector to reverse the brain drain phenomenon generated by numerous doctors and health workers moving to other EU countries, especially since the number of physicians and nurses is relatively low in Romania compared to EU averages.

16. In order to implement this measure, MH and NHIH decided to increase the amount reimbursed to the public health units with the amount related to the salary increase of the personnel, by applying a correction factor to the value of the contracts signed with each public supplier.

17. Around the same period, RCC received a complaint from a privately-owned healthcare supplier, stating that MH and NHIH introduced discriminatory measures favoring public healthcare providers to the detriment of private ones, since it involved modifying the payment formulas with a correction factor only for public providers so as to cover salary increases of the medical staff.

18. The actions of the public administration authorities that restrict prevent or distort competition by establishing discriminatory conditions for the activity of undertakings fall under the prohibition of art. 8 of the Romanian competition law.

19. In this case RCC had to identify the answer to two basic questions. First, whether public healthcare suppliers are undertakings under the Competition Law (i.e. carries on an “economic activity”) in relation to the medical services publicly funded by NHIH. Secondly, whether the public and private healthcare providers find themselves in a comparable situation, since the principle of equal treatment requires that comparable situations are not treated differently and that different situations are not treated in the same way unless such treatment is objectively justified.

20. RCC reached the conclusion that payment systems based on the "money follows the patient" principle, where the patient has freedom of choice of the healthcare provider, along with the financial responsibility of hospital management, creates the premises for public hospitals to react to the same incentives as private hospitals.

21. Although in the market for publicly funded medical services tariffs are set in the context of a set of complex regulations, the functioning of the public healthcare system is also based on competitive pressure/. The framework health law clearly stipulates and endorses the principles of free competition between suppliers who conclude contracts with NHIH and patients' freedom to choose between healthcare providers. Therefore, the provision of medical services against remuneration in a competitive environment is regarded as having an economic character.

22. As regards the concept of discrimination, RCC also carried out a comparative analysis of public and private suppliers, in order to capture the common features and degree of competition between them in relation to the provision of publicly funded healthcare services.

23. RCC found out that there are sufficient similarities between public and private providers that place them under comparable conditions from the point of view of the provision of publicly funded medical services, in terms of:

- legal obligations towards the patients insured within the public health system;
- contractual obligations and rights of public and private suppliers in relation to NHIH;
- cost structure of public and private hospitals;
- DRG case mix;

24. RCC did not contest the need to increase salaries of public health personnel, but the concrete mechanism in which the respective measure was implemented by MH and NHIH. In principle, the decisions of the central or local public administration bodies must not restrict free competition more than is necessary to achieve the objectives pursued.

25. Also, on a regulated market, but open to competition, the authorities' task is to create a fair, non-discriminatory framework that offers equal opportunities to actors, irrespective of the regime of public / private property.

26. The payment method is key to making competition work. When the amounts spent from NHIF are not closely linked and coordinated with the healthcare services supplied by providers in compliance with the principle "money follows the patient", hospitals are no longer incentivized to compete for patients, while actively increasing the financial pressure on the state budget.

27. Therefore, the equity of the providers' payment system is all the more important so that patients can benefit from a real choice between public and private providers.

28. Applying the correction factor to cover the wages increase basically led to the existence of different rates or reimbursement values based on the public / private criteria for the same kind of medical service. Given that the public healthcare market is open to competition, in other words, the funding and delivery of healthcare is based on market mechanisms and suppliers feel the pressure of competition in attracting patients, the task of the authorities is to provide suppliers with equal opportunities to compete.

29. RCC's decision stated that the application of the correction factor to the value of the medical services reimbursed only to the public providers led to the existence of a discriminatory regime, making an unjustified distinction between public and private suppliers, which does not relate to an objective indicator of assessment of the medical services, but only the public / private criterion and therefore those measures infringed Competition Law. During the course of the investigation, the incriminated legal provisions were abrogated, however the public authorities implicated challenged in court RCC's conclusion that publicly funded health care services are economic activities, and therefore subject to the application of competition law. For the time being, the RCC decision is still under judicial review.

3. Advocacy

30. With reference to the activity of adapting the legislative framework to the competition rules, RCC issues opinions and recommendations on legislative bills that may have an anticompetitive impact.

31. In this regard, RCC analyses and makes recommendation on the Framework contract on the conditions for the provision of healthcare under the health insurance system, which is renewed every two years by NHIH and MH.

32. The Framework contract on the conditions for the provision of healthcare under the health insurance system set a ban on charging co-payments for the healthcare services provided to insured patient.

33. To the extent that the level of the remuneration of publicly funded healthcare services is not optimal, that may lead to unwanted results, such as discriminating patients on the basis of the treatment required in relation to the reimbursement rate. Sub optimal rates of reimbursement may also lead suppliers to reduce quality in order to reduce their costs in relation to the fixed prices that are reimbursed or may lead to the emergence of risk selection phenomena.

34. Therefore, RCC recommended that a possible alternative solution would be to set up a package of medical benefits for which there is no additional contribution from insured persons, while leaving to healthcare providers the possibility of introducing alternative benefits packages which involve additional contribution from insured persons, in order to ensure the good functioning of the market in the interest of patients.

35. RCC advocates for concerned about the removal of any administrative barriers that limit or eliminate important sources of competition in contract award procedures within the health insurance system.

36. By analyzing the legal provisions regulating the conditions under which companies are authorized to perform post-warranty service activities for medical radiology / imaging equipment for a provider of diagnostic imaging service having a contract with NHIH, RCC found that suppliers of post-warranty repair and maintenance services must be "approved" by the equipment manufacturers in order to be eligible to perform those activities.

37. RCC recommended, as a measure to avoid conflict of interest and facilitate market development, the replacement of the manufacturer authorization as a necessary condition to perform post-warranty repair and maintenance services with a simple obligation to perform the service activities according to the manufacturer's instructions.