A Case Study

Regulatory policy of Private Medical Establishments: A Case Study of Karnataka (Amendment) Bill 2017

Prabhat Sunil Mhaske,

M.A. (Public Administration)

Abstract

The Karnataka Private Medical Establishments Act was passed in 2007 to "to bring a comprehensive legislation in place of the Karnataka Private Nursing Home (Regulation) Act, 1976" that will be the legal control over private medical establishments (PMEs) in the State. Among other things, the Bill made the registration of PMEs mandatory and laid down guidelines to ensure their quality.

Hence to protect the interests of people as well as doctors maintaining ethical standards, government introduced an amendment to original K.P.M.E Act., which aims to regulate private medical establishments to tackle the challenge of information asymmetry and to make healthcare market patients centric.

Key words: Indian healthcare services, private medical establishments, Karnataka Private Nursing Home (Regulation) Act,

Introduction:

Indian healthcare services market which is dominated by the private medical establishment suffers from grave market imperfection due to information asymmetry, Which results into Fleecing of patients by private medical establishments. As patients have very little information about medical procedures, their costs, choices available to them etc. often unnecessary investigations, compulsorily putting patients in the intensive care unit, prolonged and unnecessary use of the ventilator, recommending irrational repetition of tests and unnecessary procedures, including surgeries are performed to increase profits.

Main provisions in the amendments

1. Price control: According to the amendment, to ensure affordable healthcare, there will be an expert committee which will fix cost of each health service or treatment and different rates might be applied to medical establishments with different standards.

Limitations:

1.Enforcement problem- Only price for 80 procedures is estimated out of 4000 medical procedures till date. Also new methods of diagnosis, treatment are evolving every day so estimation of every procedure is very difficult and unrealistic. Further many patients have problems which are unique and which requires treatments and tests with some modifications. In this cases cost cannot be estimated easily.

2.Some hospitals might shut down- If they are not able to make profit, this can create serious problems in rural areas which is already suffering from the shortage of medical establishments.

3.Might Lower quality- Some hospitals might lower the quality of their service to maintain profit margin. For example, they will start using cheap quality instruments, medicines, rooms and other material etc.

4.Ignores personal skills, knowledge, efforts of doctors- Prices of medical procedures also vary according to experience, qualification, and personal skills of the doctor. For example, a surgeon who has completed his education from the best medical college in India and has 30 years of experience will charge more money than surgeon who has taken his education from private medical college and has experience of 2 to 3 years. Amendment does not consider this issue.

5.Shortage of medical professionals- If doctors will not get remunerations according to their knowledge, skills, expertise and efforts, they will move out of the state for the better opportunities which might result into severe shortage of doctors.

Corresponding Author: *Prabhat Sunil Mhaske*

Email ID: *- prabhatmhaske@gmail.com*

Address: *Dr. Vithalrao Vikhe Patil Foundation's Medical College Campus, Ahilyanagar (MS) India-414111*

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6.small hospitals will refuse the cases involving high risks which often lead to unforeseen complications which results in the increased costs.

Conclusion: Provision of capping prices is highly unrealistic and difficult to implement due to above stated reasons. Instead of tackling market imperfection it will lead to another new market imperfection. For example, when Government of India capped prices of 'Stents' to make them affordable, many companies stopped the supply of stents to Indian markets and some of them stopped introducing new better varieties of stents which are easily available in foreign markets.

Hence instead of this unrealistic method, government should have tried to bring more openness and transparency in the how hospitals price their services.

2. District and metropolitan grievance redress cell: It proposes establishment of the extrajudicial District and metropolitan grievance redress cell to investigate complaints, inspect private medical establishment and impose penalties incase on noncompliance with the act.

Limitations:

1.Composition- It will be headed by C.E.O of the Zilla Parishad and will include Superintendent of the Police, District surgeon, public prosecutor, one representative from the private medical establishments and women's representative as other members which will be appointed by state government.

Here we can see that this type of composition of redress cell looks more like government department than independent expert regulatory body. Also, CEO of zilla parishad, S.P, district surgeon are already overburdened due to existing work. Hence composition of the district redress cell is purely illogical.

2.Enough existing mechanisms- There are many mechanisms like consumer forums at district, state, national level further civil or criminal suit can be filed in the case. State medical council and medical council of India also checks malpractices and have right to remove degree of medical professionals. Hence without proper expertise and specific mandate grievance redress cell will be just another bureaucratic department with low efficiency and high corruption.

3.Whether doctors can defend themselves is not clear in the act.

4.High number of discretionary powers might lead to corruption.

Conclusion: Idea of fast-track court for medical sector related grievances in the form of District and metropolitan grievance redress cell is excellent as the current laws do not work to protect patients' rights. However current policy lacks logic behind the composition and mandate of the redress cell hence it is trying to create just another government department instead of independent specialized regulatory body.

3. Patients charter: Act makes it mandatory for the medical establishments to display patient's charter. Patients can appeal to District and metropolitan grievance redress cell in case of its violation. It includes provisions like right to make informed choice, right to take second opinion, right to redress etc. which are good to tackle information asymmetry.

Limitation: Patients charter looks toothless without strong mechanism for its enforcement and for patient's empowerment. What we need is a strong mechanism that can actively protect patient's interest by empowering them with actionable information on treatment costs, and helping patients to exercise their full rights as per the patient's charter.

4. Patients responsibilities: Act has also listed down the responsibilities of the patient which is good move but they are described vaguely and are not enforceable by law.

5. No advance payment in emergency cases: Act states that Hospitals should not demand any advance payment from patients or their relatives in emergency cases.

Limitations:

1.Who will pay if patient or relatives refuse to pay after the emergency treatment? Hence private medical establishments need some sort of guarantee from the government. e.g. Delhi government is thinking about paying emergency treatment bills of road accident victims. Similarly funds for the same purpose or temporary credit facilities can be made available as a short-term solution. And long-term solution is to increase health insurance coverage by making it available, accessible, and affordable.

2.Small private healthcare establishments do not have that man power or time to collect dues afterwards. Will government take the responsibility and pay the bills of patients who deferred from making payment?

Conclusion: This provision is pro patients as they are often harassed for advance payment in emergency cases. However, at the same time private medical establishments need some sort of guarantee regarding payment of dues.

6. Releasing dead body without demanding dues: Act states that Hospitals should not demand any due amount at the time of handing over the dead body to concerned person but should collect them later.

Limitations:

1.Again, will government take the responsibility of paying the dues as many private healthcare establishments do not have man power and time to collect them.

2.Government should allot some fund to avoid undue burden and loss to private establishments.

Conclusion: Though this provision is pro patients it puts unnecessary burden on private medical establishments.

7. Increase in fines: Fines for noncompliance with act are increased. For example, for violating price cap imprisonment up to 3 years or fine up to 1 lakh can be imposed.

Limitations:

1.Doctors might leave the state for better opportunities due to harsh punishment for the noncompliance.

2.This might act as a disincentive to new or emerging smaller private hospitals who struggle to maintain prescribed standards in initial few years.

What is missing?

1. Government hospitals are not included:

Vikramjit Sen committee recommended that government hospitals should be also included in this act to improve their standards. Though they cannot be closed incase on noncompliance but it will provide yardstick to improve their quality and standards and also it will make them more accountable.

Health Minister Kumar said that the government already works under a framework under the Directorate of Health Services that keeps their establishments accountable. Besides, the standards for the hospitals are already set by the central government under the Indian Public Health Standards. But as noted by the Vikramjit Sen committee, inclusion of government hospitals in the act would have made them more accountable and would have helped to improve their standards.

2. Patient empowerment?

The objective of the amendment was to make the previous act more pro patient and it has taken steps like patient's charter for the same. However, without any strong mechanisms to support and guide patient's patient empowerment will remain on the paper only. Though patients charter grants them right to information about treatment, available choices, right to second opinion, they will still need support to understand the given information and use it to make proper decision.

3. Proper stakeholder management:

Here stakeholders involved are private medical establishments, patients and their relatives, government, NGOs working in the healthcare sector.

1. Private medical establishment: Private medical establishments provide 80% of the total healthcare and had high stake in this amendment but they were not involved at all which made this act one sided and private medical establishments will get negatively affected due to unrealistic provisions like price caps, grievance redress cell, increase in penalties etc.

The act has not made any provisions to cancel this negative effects. For example, act states that hospitals should release the dead body without insisting on payment of dues and should not demand advance payment in emergency cases. But act is silent about who will be responsible to compensate losses incurred by the hospitals due to above provisions.

Further regarding grievance redress cell act does not makes it clear that whether doctors can defend themselves or not.

Hence, we can say that this act has not managed the stake of private medical establishment at all which is why 40,000 doctors protested in Belgaum against the amendment.

2. Patients and relatives: Price caps to ensure affordable healthcare, grievance redress cell, patients charter makes this amendment pro patients and try to tackle information asymmetry. However, given the high stakes [life and death] and the complexities involved patients will not be able to process the obtained information for making right decision without proper supportive mechanism.

3. NGOs: The amendment was passed as a result of constant demand from the NGOs working in the healthcare sector. However, amendment missed the chance to build a golden triangle of Government-People [Patients]-Civil society for patients' empowerment

Many NGOs are working independently in the healthcare sector to help patients but without proper coordination and formal recognition of their efforts their huge capacity to support patients remains unexploited. They can act as a bridge between hospitals and patients but need some formal institutional mechanism for the same.

Is Clinical Establishments (Registration and Regulation) Act relevant?

The Clinical Establishments Act provides for registration and regulation of clinical establishments in the country with a view to prescribe basic minimum standards of facilities and services of particular type being provided by the clinical establishment. Other states may adopt the law by passing a resolution in their state assemblies under clause (I) of Article 252 of the Constitution. Very few states and UT's have adopted the same.

Advantage of clinical establishments act over KPME (amendment) act:

1.The Act allows for two-step process of registration – provisional and permanent registration. Provisional registration is done through a process of self-declaration, without any inquiry or inspection. Permanent registration would be undertaken after categorization, classification, and notification of category wise minimum standards. Hence it provides some time to improve standards unlike KPME act which directly imposes penalties in case of noncompliance.

2.All clinical establishments across all recognized systems of medicine (i.e. Allopathy, Ayurveda, Yoga, Naturopathy, Homoeopathy, Siddha, Unani, and Sowa Rigpa) in both public and private sector are covered under this Act while KPME act has excluded the public sector medical establishments from the purview of the act.

3.Nationwide coordination through national, state and district council which will result in the generation of database of all clinical establishments in the country.

Hence committee on KPME act suggested that Clinical establishments act by central government should be adopted in the Karnataka with suitable modifications so as to bring uniformity, avoid conflict of interests and controversies.

What role can National Accreditation Board for Hospitals & Healthcare Providers (NABH) play?

NABH is a constituent board of Quality Council of India (QCI), set up to establish and operate accreditation programme for healthcare organizations. The board while being supported by all stakeholders including industry, consumers, government, have full functional autonomy in its operation.

Advantage of NABH:

1.Patients are the biggest beneficiaries. Accreditation results in high quality of care and patient safety. The patients get services by credential medical staff. Rights of patients are respected and protected. Patient satisfaction is regularly evaluated.

2.Accreditation to a Hospital stimulates continuous improvement. It enables hospital in demonstrating commitment to quality care. It raises community confidence in the services provided by the hospital. It also provides opportunity to healthcare unit to benchmark with the best.

3.Accreditation provides access to reliable and certified information on facilities, infrastructure, and level of care

Hence an Independent expert body can play a big role to improve the quality of healthcare establishments.

Conclusion:

From the above analysis we can clearly see that the amendment to KPME act hurts more than it helps due to following reasons-

1.Though it recognizes the problem correctly, solutions proposed are highly unrealistic and illogical. e.g. price caps, grievance redress cell etc.

2.It lacks proper stakeholder management which makes the Act one directional. It doesn't even recognize negative effects which will be faced by some of the stake holders and has not touched the question of how to settle them.

3.It has not considered alternatives like Clinical establishments act by central government, NHAB, involvement of civil society etc. which can play major role in improving the quality of healthcare sector in the state and making it pro people.

4.Act states its main objective as a Patient centered healthcare system. But provisions made by it for the same are highly inadequate and mechanism for the patient's empowerment remains untouched which renders good ideas in the act like patients charter ineffective.

5.Amendment has missed some important points completely. For example, it has not considered inclusion of the government hospitals under the act.

Way forward-

KPME act amendment made serious effects to tackle problems faced by patients due to large information asymmetry in the healthcare market. However, without proper stakeholder management it proposes solutions which are good on paper and not viable in the complex market situations where small intervention by the government might lead to harmful consequences and negative externalities.

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