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| Date           | 12 April 2019  |

Dear Mapato

## HMI PROVISIONAL RECOMMENDATIONS: BILATERAL VERSUS MULTILATERAL TARIFF NEGOTIATIONS

We refer to the discussions pertaining to bilateral and multilateral tariff negotiations at the HMI seminars on 9 and 10 April 2019.

The purpose of this letter is to obtain confirmation from the HMI that Mediclinic correctly understands the HMI's current recommendation in respect of bilateral and multilateral tariff negotiations and the proposed role of the Supply-Side Regulator for Healthcare ("**SSRH**") (if applicable). To this end Mediclinic also asks further questions in respect of which it requests written clarification.

Lastly Mediclinic requests that the HMI arrange a stakeholder seminar on this topic. The HMI itself has conceded that there was confusion in respect of the HMI's recommendation as set out in the HMI Provisional Report and that many stakeholders had understood that they could opt out of multilateral tariff negotiations. On 10 April the HMI clarified that it currently provisionally recommends multilateral negotiations be mandatory for all providers and funders. This is in the absence of any evidentiary basis. Such a recommendation could have significant anticompetitive consequences and it is critical that the HMI benefit from stakeholder engagement prior to formulating its final recommendations.

### 1 Background

1.1 In a meeting with the HMI dated 3 October 2018, Mediclinic explained that its interpretation of the Provisional Report was that the HMI supported bilateral negotiations for funders and corporate entities (including hospitals). Mediclinic did however indicate that there was some uncertainty and sought clarification.

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- 1.2 At this meeting, Dr Bhengu indicated his view was support for bilateral negotiations for alternative reimbursement models ("**ARMs**"), but that fee-for-service ("**FFS**") tariff negotiations may apply in a multilateral setting. The question was asked by Mediclinic whether it could find itself in multilateral tariff negotiations and Dr Bhengu advised that the HMI, at that stage, did not have a view as to whether stakeholders could elect to opt out of the proposed multilateral tariff negotiations for FFS.
- 1.3 Mediclinic's initial interpretation of the Provisional Report,<sup>1</sup> namely that the HMI supported bilateral negotiations for funders and corporate entities (including hospitals) was reaffirmed in Mediclinic's comments to the Provisional Report. Mediclinic deemed this interpretation appropriate in the absence of any evidence supporting a need for regulated pricing or pricing intervention in respect of hospitals. Mediclinic cautioned that in the light of the evidence before the HMI, the application of such invasive mechanisms to the hospital groups would be irrational, inappropriate, and unwarranted, and would have a detrimental effect on competition and innovation. Mediclinic further pointed out that it would be artificial to distinguish FFS tariffs as requiring multilateral negotiations and ARMs requiring bilateral negotiations. Mediclinic sought clarity on the role of the SSRH and requested the continuation of bilateral bargaining for FFS tariffs and ARMs without intervention by the SSRH.
- 1.4 At this time Mediclinic confirmed that the HMI's proposals in respect of 'regulated pricing' and a 'multilateral forum' make sense in respect of practitioners given the logistical difficulties of funder negotiations with individual practitioners.
- 1.5 At the 2018 HASA conference Professor Fonn suggested that multilateral tariff negotiations would only apply to practitioners.
- 1.6 At the HMI seminar on 9 April 2019, the Panel indicated that although it was not a topic on which stakeholders were asked to prepare, they would like to hear stakeholders' views in respect of the issue of a reference price in the context of bilateral and multilateral tariff negotiations. The next day Mediclinic then requested that the Panel clarify their provisional recommendations in this regard as there was significant uncertainty.

## 2 The HMI's current proposal

- 2.1 We record below Mediclinic's understanding of the Panel's current position as explained by Dr Bhengu at the HMI seminar of 10 April 2019. The Panel is requested to please confirm in writing if Mediclinic has correctly understood the HMI's current provisional recommendation:
- 2.1.1 Multilateral negotiations are intended to address the HMI's concern with a 'tariff vacuum'.
- 2.1.2 The HMI also supports bilateral negotiations and funders and providers can elect that option.
- 2.1.3 Responses from stakeholders to the Provisional Report however indicated that there is confusion as to the HMI's proposal. Certain stakeholders also expressed a preference to opt out of a multilateral forum.
- 2.1.4 The HMI clarified that all stakeholders also have to participate in multilateral negotiations, even if they also negotiate bilaterally.
- 2.1.5 The HMI's aim is to avoid a situation where there are "gaps". The HMI's concern is that if all parties are not mandated to be part of the multilateral forum, some parties could be left out (for example, new hospitals) and certain service lines could remain without a tariff. The HMI is further concerned that smaller schemes are not deemed important enough by the hospitals (and could be left out of negotiations) and similarly that the larger funders may choose not to negotiate with smaller hospitals.
- 2.1.6 In the event that bilateral negotiations are unsuccessful, a reference price will then be available.
- 2.1.7 The reference price will only be a maximum for prescribed minimum benefits ("**PMBs**"). For non-PMB's, providers can charge higher or lower than the reference price.

<sup>1</sup> Mediclinic's response to the Provisional Report dated 15 October 2018, para 6.7 of the CDH letter.

### 3 Request for further clarity

The following still remains unclear and the HMI is kindly requested to provide written guidance in this regard. Whilst Mediclinic appreciates that the Provisional Report provides that further clarity on certain issues will be provided in the form of guidelines when this regime is in force, it is critical that a reasonable level of detail be understood at this juncture so that it can be understood whether the proposal is viable and practically workable, whether unintended anticompetitive consequences are likely.

- 3.1 Is the HMI's intention that all service lines, in addition to PMBs, will be determined multilaterally? If so, is the only difference that PMBs will be binding and non-PMB FFS will be reference prices?
- 3.2 Is it proposed that the maximum price for PMBs apply to the multilateral and bilateral negotiated prices, or only the multilateral negotiated prices?
- 3.3 Does the HMI distinguish between FFS and ARMs in respect of its multilateral tariff proposal recommendation? And if so, how?
- 3.4 What is the process by which the initial reference price will be reached?
- 3.5 How does the HMI conceive the determination of reference prices for PMBs, a diagnosis and treatment pair, given the divergent and fragmented billing practices between providers? Mediclinic notes that unlike practitioners, line item tariffs of facilities do not distinguish between PMB and non-PMB admissions.
- 3.6 Has the HMI considered the practical complexities that may arise in having different prices for PMBs and non-PMBs at hospital level, given the challenges in determining whether a patient is being treated for a PMB or non-PMB condition?
- 3.7 Is it envisaged that annual increases will be negotiated each year?
- 3.8 How does the HMI envisage taking account of the providers' efficiencies, costs, and the total cost per event?
- 3.9 Does the envisaged negotiations on price for PMBs correlate with the proposed base package or not?
- 3.10 Can the HMI please elaborate on why it perceives there to be a tariff vacuum in the private hospital market?
- 3.11 If a stakeholder participates in multilateral negotiations, does that preclude that stakeholder from participating in subsequent bilateral negotiations?

### 4 Request for seminar

- 4.1 As illustrated by the limited debate at the HMI seminars on 9 and 10 April 2019, the HMI's proposed recommendation of multilateral negotiations is invasive and complex, and the potential for unintended anticompetitive consequences is strong.
- 4.2 Given that this was not an earmarked topic for the seminars, there was understandably limited time for the HMI to clarify all the uncertainty and for meaningful discussion to then take place. Stakeholders were also not forewarned of the need to prepare on this issue. During the discussion, Dr Bhengu asked Mediclinic to take the discussion "off line". Mediclinic fully supports further ventilation and suggests that, for the benefit of all stakeholders, this take place by way of a seminar with the full HMI panel.
- 4.3 The HMI is requested to provide its written clarifications in good time ahead of the seminar, as well as reasonable notice of the seminar, to enable meaningful preparation and participation.

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We look forward to hearing from you.

Yours faithfully



**ANDRE DE LANGE / SUSAN MEYER**  
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