THE NATIONAL LAW REVIEW

The UK Care Sector | A Cold Climate for Care Homes

Monday, December 18, 2017

Summary

Investors will find little holiday cheer in the Competition & Markets Authority (CMA) final report on the UK Care Sector, published 30 November 2017.

The report focuses on consumer protections and the sector's financial sustainability. It emphasises well-known challenges, as reported in McDermott's previous article, "The UK Care Sector | Problem or Opportunity for Investors?", but offers no quick fixes.

Here we present a summary of the points identified in the report.

Article By Alicia Videon
Sharon LambMcDermott Will & Emery
On the Subject

Global
Health Law & Managed Care
United Kingdom

In Depth

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Competition Issues: Choice in Care Homes and Protection of Consumer Rights

The Competition & Markets Authority (CMA) identified a litany of possible breaches of consumer law, including lack of indicative pricing to residents, late or non-provision of contracts, unfair or unilateral rights to increase fees, and the imposition of fees after death. The CMA plans to issue guidance on standards of behaviour in spring 2018, and will continue to monitor practice and take enforcement action where it identifies serious or harmful practice.

State-Funded Care

The CMA's profitability assessment concluded, unsurprisingly, that the average fees paid by local authorities are below the cost of providing care and that many care homes are not in a sustainable position. Self-payers are subsiding the local authorities' funded residents; self-payers at large providers pay on average 41 per cent more than local authorities for the same care.

The inherent problem here is obvious; why would the private sector be willing to provide services for local authorities in the long term if this gap is increasing and there is no clear mechanism to charge the fair costs of provision? This difference in self-funded and local authority prices is, as the CMA points out, understandably perceived as unfair. Individual residents are seen to be shouldering the burden of the cost of provision, and most are not wealthy.

Meeting Future Care Needs

Another self-evident problem is the increase in future care needs, estimated to be an extra £1–2 billion a year by 2025. The CMA considers that, at a minimum, an additional £200–300 million per year would be required, and then only if that money was specifically spent on increasing fee rates.

The CMA identifies three things that local authorities must do to encourage investment: plan, take commissioning steps and attract investors. The CMA is critical of local authorities' current limited market-shaping activities in terms of planning and estimating future needs.

In response to these issues, the recommendations made (for England and Northern Ireland) are as follows:

- **Enhanced planning:** Given that local authorities do not appear to be planning for the future, a new single independent body should be established to assist and coordinate.
- **Oversight of local authorities' commission practices and transparency:** A new body should monitor and assess commissioning by local authorities and provide transparency on pricing.
- **Funding principles:** A formalised process should establish the cost of care, and advice on future needs should be given to the government

Whilst this is helpful guidance, many in the market may see the outcome as cold comfort for care homes, because it does not compel local authorities to pay the full cost of care for all residents they fund.

According to the report, the CMA considered imposing a requirement that fees charged to self- funders should be the same as those charges to local authorities. The reasons for not doing so are pragmatic; no operator could afford to bring down fees to self-funders, and the cost to local authorities of matching fees would be huge.

The CMA notes that it is ultimately for the government to make decisions on public funding. However, it does recommend that a formalised process be established to provide advisory evidence to the government on future care needs.

The CMA admits that this approach doesn't provide certainty for investors but comments that investors may be able to take a reasonable view on commitments to take account costs of care. There is a suggestion that the recommendations will facilitate an increase in local authority fees over time. It is not apparent why that will happen, however, or whether it will happen to a degree sufficient to address the issue.

Ultimately the report is written with an eye to the government's green paper on care and support for older people, to be published in summer 2018. While this is a significant political issue, it risks being overshadowed by continuing Brexit negotiations and perhaps a pragmatic recognition that any real reform is unlikely.

Whilst the report shines a light on the sector, the issues under the spotlight are already well known, and care home operators who were hoping for a clear and certain process to address funding shortfalls will be disappointed that there is no quick fix. Investor and operator focus will now shift to the response that local authority and regulatory bodies will make to the recommendations.