THE HEALTHCARE LAW REVIEW

SECOND EDITION

Editor
Sarah Ellson

THE LAWREVIEWS

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EDITOR'S PREFACE

Welcome to the second edition of *The Healthcare Law Review*. The *Review* provides an introduction to healthcare economies and their legal frameworks in 17 jurisdictions, with new contributions from Japan, Korea and Finland. These new chapters, together with updates to the jurisdictions previously covered in the first edition, only serve to emphasise that this is a constantly changing environment. While hugely diverse, it is possible to discern common challenges and similar approaches in very different countries.

Across the globe, leaders recognise the World Health Organization's principle – the health of all peoples is fundamental to the attainment of peace and security and is dependent on the fullest cooperation of individuals and states. Every country wants a health system to care for the sick and promote the well-being of its people. Every nation wants to raise the bar to keep up with improving living standards and expectations. However, every economy requires this to be done at an affordable price. Managing the costs of healthcare and workforce shortages, and ensuring a sustainable model of delivery, seem to be key drivers in each of the countries covered in this publication. One area of focus has been integration between health and wider social care, particularly for the elderly and those with chronic conditions, reducing emergency admissions and improving the chances of care being provided locally, rather than requiring hospital admissions. Another evolving theme has been the ever-increasing role of digital technologies providing options for care at a physical distance from hospitals, clinics and healthcare professionals.

The ways different countries are meeting these demands vary enormously, and for the healthcare lawyer, or the healthcare provider, alternative destinations provide unique challenges, risks and opportunities. This publication identifies the broad characteristics of healthcare to be found in each jurisdiction. It considers: the role of insurance or public payers; models of commissioning; the interplay (or lack of it) between primary, secondary and social care; and the regulatory and licensing arrangements for healthcare providers and professionals.

These continue to be exciting times for the delivery of healthcare, with digital technologies, genomic personalised medicine and the eradication of certain diseases through vaccination. Patients, data and providers are moving globally and the pace of development is relentless. This year has seen a recognition of the real value of data in the provision of care and the development of healthcare technology; this has been coupled with new legislation including the European General Data Protection Regulation, which has impacted not just on data controllers in Europe but on many of the international providers caring for EU citizens. Younger healthcare economies are offering exciting new opportunities in a market where healthcare professionals can be a scarce resource; more mature markets are having to address ageing infrastructure and a pressing need to reform to meet today's challenges.

Each chapter has been written by leading experts who describe succinctly their own country's healthcare ecosystems. I would like to thank them for the time and attention they have given to this project and also the wider team at Law Business Research for their support and organisation.

Sarah Ellson
Fieldfisher
Manchester
July 2018

Chapter 6

FINLAND

Kirsi Kannaste, Terhi Kauti and Leena Lindberg[1]

I OVERVIEW

Under Finnish law, municipalities are currently primarily responsible for organising healthcare and social services. Municipalities can also purchase social welfare and healthcare services from other municipalities, organisations or private service providers. Private healthcare services thus supplement municipal services. In addition, employers have a statutory obligation to arrange occupational healthcare for employees. Despite the recent considerable growth of the private sector's share in the provision of services, healthcare and social services are at present still mainly provided by public entities.

The Finnish healthcare and social services system is currently undergoing a major reform, which if materialised would be implemented gradually as of 2021 onwards. This would drastically change the structure and organisation of healthcare services in Finland. Therefore, while this chapter describes the current state of the healthcare system in Finland, it should be borne in mind that the reform is likely to change the system significantly in the near future.

On a general level, the purpose of the reform is to obtain costs savings and to enhance efficiency in public healthcare. One of the main changes would be that the responsibility for providing public healthcare services would be transferred from the currently responsible 311 municipalities to 18 new larger autonomous regions (counties). The state would be primarily responsible for financing the new autonomous regions. The customers' freedom of choice would be enhanced by allowing the customers to choose where they want to receive services by the payment of the basic user charge. This reform would also further integrate private operators into the healthcare and social services system and would thus likely enhance the growth of the private healthcare companies.

As for the relevant national bodies in the Finnish healthcare sector, the Finnish Ministry of Social Affairs and Health is in charge of the planning, steering and implementation of social and health policy and preparing legislation. The Social Insurance Institution of Finland is a government agency that provides basic economic security for everyone living in Finland and is responsible, for example, for paying various social benefits, such as family benefits and basic unemployment security. The National Supervisory Authority for Welfare and Health guides, supervises and runs the licensing administration of social and healthcare while the Finnish Medicines Agency (Fimea) does the same for the pharmaceutical sector. The Regional State Administrative Agencies are responsible for supervising healthcare on a regional level.

1 Kirsi Kannaste, partner, Terhi Kauti, counsel, and Leena Lindberg, partner, jointly head Krogerus Attorneys Ltd's healthcare and pharmaceuticals group.

II THE HEALTHCARE ECONOMY

i General

The constitutional obligation for providing adequate social, health and medical services to all is enforced primarily via municipalities, who are responsible for offering primary healthcare services to their residents.[2] Moreover, specialised medical care is assigned to five regional hospital districts, which together cover all Finnish municipalities.[3]

The municipalities are free to choose how they carry out the required primary healthcare operations, as long as they fulfil the requirements set by law. Also specialised medical care may be procured from third parties.

Permanent residents of Finland are insured against illness by the National Health Insurance scheme, which covers a share of medication costs, private medical expenses as well as certain sickness and parental allowances.

In addition to the above, employers are required to offer occupational healthcare services to their employees. Employers may choose to use either public or private service providers.[4]

Hence, both public and private options for health and medical care are available, although the most demanding medical care is typically carried out by public specialised hospitals. While the National Health Insurance covers a small share of private medical expenses, it remains considerably more expensive than the fees collected by public service providers.

ii The role of health insurance

The National Health Insurance scheme generally applies to every permanent Finnish resident, meaning persons who are domiciled and spend most of their time in Finland.[5] The scheme is financed by mandatory premiums paid by employers, employees and the state.

The premiums paid by employees and employers are both set as a percentage of the employee's annual salary. The employer's premiums are mandatory for any employer or self-employed person where their operations in Finland last longer than four months (irrespective of where the self-employed person resides). In addition, employers shall take out an insurance against occupational accidents and diseases for their employees. Employers may also choose to take out excess coverage for all or key employees.

Private health insurance functions as an addition to the existing public health insurance and does not limit the statutory insurance coverage. Typically, private policies cover private medical expenses wholly or partly. Moreover, insurance companies may typically conclude agreements with certain private healthcare service providers on services for its policy holders.

iii Funding and payment for specific services

Municipalities may charge fees for the primary healthcare services they provide.[6] The maximum level of fees is set in legislation and typically covers only a fraction of the services'

2 The Constitution of Finland (731/1999), The Primary Health Care Act (66/1972).

3 The Act on Specialised Medical Care (1062/1989).

4 Occupational Health Care Act, 1383/2001.

5 The Health Insurance Act (1224/2004).

6 Primary healthcare includes health promotion, and any related provision of health counselling and health checks, oral healthcare, medical rehabilitation, occupational healthcare, environmental healthcare, as well

costs.[7] Moreover, fees for public services have an upper limit per calendar year per person, beyond which services are free of charge. Similarly, patients bear only a fraction of the costs of public specialised medical care by paying publicly determined fees, while the bulk is covered by public funds.[8]

The National Health Insurance is funded by beneficiaries' and employers' mandatory health insurance premiums as well as state subsidies. It covers a share of certain expenses, such as private doctor fees, examinations and treatments prescribed by private doctors, private dentist fees and examinations prescribed by the same, costs of prescribed medications and illness-related transport. Persons covered by National Health Insurance are also entitled to sickness allowance owing to long-term incapacity to work, rehabilitation allowance and parental allowance (separate from maternal and paternal allowance). These reimbursements and allowances are granted by the Social Insurance Institution of Finland.

Using private healthcare services is almost entirely at the individual's expense, as the National Health Insurance only covers a minor share of private medical costs. Private operators are free to fix the price of services at the desired level, which is normally notably higher than in the public sector.

III PRIMARY/FAMILY MEDICINE, HOSPITALS AND SOCIAL CARE

The provision of private healthcare and social care is subject to licence, the conditions of which are set in legislation.[9] Currently private licensed entities may provide all the same services as public entities. Within public sector healthcare, patients shall, in case of illness, primarily contact their own designated health centre to make an appointment with a general practitioner or a nurse. Appointments on short notice are possible for illnesses that require urgent care, while the waiting time for non-urgent healthcare may be rather long. It is also possible to consult a nurse or a general practitioner *ad hoc* at a local public health centre during duty hours. Outside the opening hours of a public health centre, urgent cases are directed to emergency clinics located in connection with hospitals.

For both pre-booked appointments and *ad hoc* visits to the health centre, it is evaluated, based on the patient's symptoms, whether treatment by a nurse or a general practitioner is required. Appointments with specialists may thus not be booked directly. Instead, general practitioners refer patients to specialists where necessary.

Private healthcare providers are typically able to provide appointments to both generalist practitioners and specialist medical consultants with rather short notice. Private healthcare providers typically may make referrals also to public laboratories, but private referrals are not valid for public sector X-rays, ultrasound and magnetic resonance imaging.

In Finland, medical records are restored electronically by the healthcare institutions. This information can then be found in the nationwide register called Kanta. This platform

as emergency medical care, outpatient care, home nursing, at-home hospital care and inpatient care, mental health services, and substance abuse services where these are not covered by social services or specialised medical care (See Health Care Act, 1326/2010).

7 See Act on Social and Healthcare Client Fees (734/1992) and Decree on Social and Healthcare Client Fees (912/1992).

8 Specialised medical care entails specialised medical and dental healthcare, services pertaining to preventing, diagnosing and treating illnesses, emergency medical service, emergency medical care and medical rehabilitation.

9 Private Health Care Act (152/1990), Private Social Care Act (922/2011).

offers individuals the possibility to study all personal medical records in one place. It requires the consent of the individual for different institutions to be able to use information provided in the register by other institutions where the patient has already been treated.

Sharing identifiable patient data constitutes processing of personal data and therefore the provisions of data protection legislation need to be taken into account, especially the EU General Data Protection Regulation (GDPR) and the Finnish Data Protection Act along with Finnish sectoral legislation (which is fairly plentiful in the field of healthcare). The Finnish sectoral legislation is currently under review by the relevant Ministries and changes to the healthcare-related legislation are also expected. One interesting topic is the future of the Finnish Biobank Act under the regime of the GDPR. The biobank legislation in Finland has had a rather permissive approach for the use of data in connection with biobanks and has allowed for a broad consent to be obtained, which among other issues is now being discussed thanks to the GDPR.

IV THE LICENSING OF HEALTHCARE PROVIDERS AND PROFESSIONALS

i Regulators

The Regional State Administrative Agencies have been entrusted with guiding and monitoring municipal and private social welfare and healthcare services and evaluating the availability and quality of basic services provided by municipalities in their respective regions. They are also responsible for granting licences to private service providers in the region. Meanwhile, the National Supervisory Authority for Welfare and Health guides, monitors and manages the administration of licences for the social welfare and healthcare sector. It is also responsible for granting the right to practise as a licensed or authorised healthcare professional and for authorising the use of occupational titles.

ii Institutional healthcare providers

Municipalities, who provide statutory basic social welfare and healthcare services either alone, or form joint municipal authorities with other municipalities, do not require a licence. Similarly, hospital districts provide medical care services without the need for a licence.

Private service providers must obtain a licence to operate health, medical or social care services. Where the service provider operates in one region only, the licence is granted by the Regional State Administrative Agency in the respective region and where the service provider operates in several regions, the licence is granted by the National Supervisory Authority for Welfare and Health. Exceptionally, where employers themselves organise statutory occupational healthcare for their employees, no licence is required for the employer itself but the healthcare professionals are of course subject to the same requirements as described below.

Unlicensed provision of healthcare services is criminally sanctioned and may lead to fines or imprisonment.[10] A licence may also be revoked following gross negligence of the laws concerning the provision of healthcare.[11]

Operating a pharmacy is also subject to licence. A pharmacy licence can be granted to qualified pharmacists having obtained a Master of Science degree in Pharmacy. Fimea grants pharmacy licences based on applications, taking into account, among other factors,

10 Section 3 of Chapter 44 of the Criminal Act (39/1889).

11 Section 22 of the Private Health Care Act (152/1990).

the demand for pharmacy services at the location of the pharmacy. As an exception, certain universities may operate pharmacies by virtue of special legislation. Unlicensed operation of a pharmacy is criminally sanctioned. Fimea may also issue a written or oral warning to a pharmacist for undue conduct as well as revoke a licence, for instance if the pharmacist is unable to maintain operations because of bankruptcy, illness, or substance abuse, or if the pharmacist is otherwise clearly unfit to operate a pharmacy.[12]

iii Healthcare professionals

Practising the professions of a doctor, dentist and nurse in Finland is subject to licence.[13] Unlicensed provision of healthcare services is sanctioned in criminal law. Recently, an unlicensed person was sentenced to five years of unconditional imprisonment for having practised medicine for roughly 10 years without a valid permit.[14] Moreover, all healthcare operators must take out statutory patient insurance providing primary insurance coverage for patients' personal injuries.

As a member of the EU, Finland guarantees the free movement of healthcare professionals from other EU Member States, who may practise their profession in Finland upon receiving the required professional licence. In general, the National Supervisory Authority for Welfare and Health grants the licence, upon application, to doctors, odontologists and nurses from other Member States in accordance with the principle of automatic recognition.

Granting nationals of non-EU or non-EEA states authorisation to practise as licensed professionals in Finland is subject to stricter requirements. In principle, the National Supervisory Authority for Welfare and Health may grant the authorisation only for special reasons and on conditions prescribed by it. These conditions may include, among others, additional studies and examinations as well as mandatory training periods.

In order to obtain a licence, healthcare professionals must possess adequate language proficiency to practise their profession in Finland. The required level of proficiency is in connection with managing the profession adequately in either of the two official languages in Finland: Finnish or Swedish.

All information on up-to-date licences of authorised healthcare professionals is available to the public on an internet portal provided by the National Supervisory Authority for Welfare and Health.

V NEGLIGENCE LIABILITY

i Overview

All healthcare providers, including self-employed healthcare professionals, companies that offer healthcare or emergency medical services, pharmacies, hospital districts, and government agencies and public bodies must have patient insurance as set out in the Patient Injuries Act.[15] Negligence liability cases are primarily covered by this patient insurance system. The insurance covers bodily injury arising from malpractice, infection, accidents, accidents caused by medical devices, damages caused by the treatment rooms and apparatus, harm caused by

12 See the Medicines Act (395/1987).

13 See the Act on Health Care Professionals (559/1994).

14 Helsinki Court of Appeal, judgment 112532, 30 March 2017.

15 The Patient Injuries Act (585/1986).

delivery of medicaments and other unreasonable damage. The insurance does not cover risks inherently contained in the treatment, nor is compensation available when an appropriately applied treatment does not give the desired results. Minor damages are also not covered.

The Act on the Status and Rights of Patients primarily sets out requirements for the quality of healthcare services to be provided by both public and private operators in Finland.[16] Furthermore, there is legislation regulating specific situations.[17] While the violation of these Acts does not directly affect the compensation to be granted by the Patient Insurance Centre, the Finnish entity responsible for handling all personal injuries that have occurred in connection with healthcare activities in accordance with the Patient Injuries Act, the Acts provide a backdrop for assessing the acceptable quality level of healthcare services. The level of compensation paid on the basis of negligence in the healthcare context is relatively moderate on a global scale and punitive damages, for example, are not allowed under Finnish law.

If the injured patient is entitled to receive compensation from the party that caused the injury, the insurer has a right of recourse towards that party. In rare cases where the damage is not covered by the statutory patient insurance, the patient may have a right to claim compensation for injuries directly from the healthcare provider (e.g., under the Tort Liability Act or the Product Liability Act).[18] Claims for material damage caused in connection with medical treatment may also be filed against the party causing the damage. It is also noteworthy that under the Tort Liability Act the employer is primarily liable for damages caused by an employee or a public official through an error or negligence at work.

In the most severe cases, healthcare professionals may bear criminal liability. Negligent homicide and negligent bodily injury are the most probable offences in this context.[19] Sanctions for these offences vary from fines to imprisonment for at most six years. However, damages resulting from incorrect treatment rarely lead to criminal liability, in particular because of challenges in demonstrating intent or negligence.

Other measures protecting patients' rights include the right to submit an objection to the director of a healthcare unit or a complaint to the competent Regional State Administrative Agencies, the National Supervisory Authority for Welfare and Health, the Parliamentary Ombudsman or the Chancellor of Justice. In addition, patients have the right to appeal against decisions concerning involuntary treatment. The competent supervisory authority may, for example, give administrative guidance, in the form of warnings, to the healthcare professionals. In severe cases, the professional's licence to practise can be limited or removed. Similar restrictions can be imposed to the service provider functioning as the employer.

ii Notable cases

Liability and compensation for treatment injuries or other healthcare-related damages are often dependent on whether the injured party can prove causality between the injury and the treatment, and negligence. However, the threshold for reimbursement from the patient injury insurance under the Patient Injuries Act is somewhat lower, as its precondition is a 'probable' causality between treatment and injury, and because no demonstration of wilful conduct or negligence is required. Instead, the patient's right to compensation depends on

16 The Act on the Status and Rights of Patients (785/1992).

17 E.g., the Mental Health Act (1116/1990) and the Communicable Diseases Act (583/1986).

18 The Tort Liability Act (412/1974) and the Product Liability Act (694/1990).

19 Chapter 21, Sections 8–11 of the Criminal Code of Finland (39/1889).

whether an experienced healthcare professional would have examined, treated or otherwise dealt with the patient in a different manner and would thereby probably have avoided the injury.

A recent case on personal injury from the healthcare sector concerns vaccinations against swine flu distributed with government support in 2009. After the pandemic had passed, narcolepsy cases were found to have increased among vaccinated individuals, leading to the precautionary suspension of the vaccines in 2010. Compensation was eventually paid to patients from the non-statutory Pharmaceutical Injuries Insurance, which covers injuries caused by all medicines distributed, manufactured, imported or marketed by entities who are members of the Finnish Cooperative for the Indemnification of Medicine-Related Injuries.

A landmark criminal case relating to liability in the healthcare sector is the Supreme Court ruling KKO 1994:101 dealing with manslaughter of a child. A, who had claimed to be a naturopathy expert, had advised parents whose child suffered from diabetes to replace insulin treatment by a treatment based on hot baths. The child's condition had aggravated while A was treating him, but A did not give the child insulin nor take him to a hospital. The Supreme Court held that A should have understood that the provided treatment was not proper for the child and A was thus liable for the child's death. A was sentenced to conditional imprisonment of six months for manslaughter.

The Supreme Court case KKO 2010:67 concerned compensation based on the Patient Injuries Act. The Supreme Court considered whether a fracture in the patient's hip allegedly caused by the installation of an endoprosthesis could have been avoided if a specialised and experienced professional had treated the patient. The Supreme Court held that in this case the level of expertise and care had been adequate and consequently no injury was to be compensated. Furthermore, no weight was given to the fact that the risk of fracture had not been explained to the patient, because it did not influence the avoidability of the injury.

Issues relating to data protection have also been topical in Finland. An exemplary case was KKO 2014:86 where a physician in a psychiatric outpatient clinic had read his spouse's relative's patient information, even though the patient was not in his care. The court considered this action unnecessary and wilful misconduct and, thus, a violation of official duty.[20] The court also maintained the lower court's decision making the physician liable for damages to the injured party.

Furthermore, in a recent case of data leakage, personal data and laboratory test results of around 6,000 persons were accidentally made available online by the National Institute for Health and Welfare. The National Supervisory Authority for Welfare and Health has also investigated cases where patient information system issues have potentially endangered patient safety. Currently no information on sanctions or follow-up claims is available.

VI OWNERSHIP OF HEALTHCARE BUSINESSES

The public sector is under a statutory obligation to provide adequate healthcare services and, consequently, most healthcare services are provided by publicly owned entities. Non-profit organisations are active in the social welfare sector, but less so within healthcare. In addition, self-employed persons and private businesses provide healthcare services. The ownership

20 Chapter 40, Section 9 of the Criminal Code of Finland (39/1889).

of private healthcare businesses is rather highly concentrated when it comes to nationwide chains. All healthcare provision is regulated by law, but more regulation and monitoring is applied to private service providers to ensure the safety and quality of the services.

There are no sector-specific limitations on the ownership of healthcare businesses, and major players in the sector include listed companies as well as companies wholly or partly owned by foreign entities. As an exception, pharmacies can generally not be operated by a company, but only by a licensed pharmacist. Moreover, the Act on the Monitoring of Foreigners' Corporate Acquisitions (623/1999) may have an impact on foreign ownership, should the acquisition be considered to jeopardise an extremely important national interest.

EU and national competition laws may restrict the possibility to create large concentrations within the sector. This will be true in particular if the planned healthcare reform is successful, as new sector-specific regulation on merger control is likely to be proposed. Private healthcare service providers are governed by the Private Healthcare Act.[21] As mentioned above, private healthcare providers are required to apply for a licence either from the competent Regional State Administrative Agency or the National Supervisory Authority for Welfare and Health. The Private Healthcare Act does not include any specific criteria for financial viability, but sets requirements, such as for appropriate facilities and equipment, proper training of staff, quality of medical services and patient safety. The service provider has to, among other things, have a healthcare service manager who has been approved by the licensing authority and a patient ombudsman who enforces the patient's rights.

VII COMMISSIONING AND PROCUREMENT

Municipalities may provide primary healthcare services in-house, form joint municipal authorities, or procure them partly or wholly from third parties, such as other municipalities, NGOs and private sector service providers. Several municipalities have outsourced the provision of their entire healthcare services to private companies by long-term contracts. Some municipalities have also established joint ventures with private companies. Moreover, hospital districts and university hospitals may procure specialised medical care from third parties.

Municipalities may also decide to provide social and healthcare services by granting service vouchers to local residents. In this case, the Act on Public Procurement and Concession Contracts does not apply. If service vouchers are used, all service providers fulfilling certain objective criteria must be accepted onto a list from which residents may choose a service provider of their liking.

Where healthcare and medical care is procured from third parties, Finnish public procurement law applies.[22] Tenderers must fulfil the qualification criteria set out by the contracting authority in the contract notice or invitation to tender. The criteria to be chosen are at the discretion of the contracting authority, as long as the criteria comply with the principles of openness, non-discrimination and proportionality.

The procurement of healthcare services has been reviewed in several court cases. The cases have mainly concerned compliance with public procurement rules, in particular as regards ambiguity of award criteria and evaluation of tenders. In addition, a large-scale

21 The Private Healthcare Act (152/1990).

22 The Act on Public Procurement and Concession Contracts (1397/2016).

outsourcing project within the healthcare sector was appealed against before the Market Court in December 2017. The estimated value of the contract was €1 billion. However, the appeal was withdrawn.[23]

The ongoing reform of the Finnish social and healthcare system would change the commissioning of these services. According to the Finnish Competition and Consumer Authority, which also supervises public procurement, the upcoming reform has already affected the nature and volume of procurement of these services. In 2017, out of all sectors, social and healthcare services as well as procurement of medical devices gave rise to the largest number of opened procurement cases at the authority.[24]

VIII MARKETING AND PROMOTION OF SERVICES

At present, the applicable regulation and monitoring of marketing is mainly directed at private healthcare service providers in Finland. Marketing and promotion of private healthcare services is primarily regulated under the general consumer protection laws and unfair business practice legislation. No specific legislation in the field of marketing or promotion of health services exists.

The Consumer Protection Act regulates that any marketing that is inappropriate or otherwise unfair from the point of view of consumers is prohibited.[25] Marketing must clearly indicate its commercial purpose and on whose behalf the marketing is carried out. A general prohibition to use false or misleading information applies.

The Unfair Business Practices Act prohibits practices that are unfair to other entrepreneurs as well as sets out general provisions on marketing.[26] The Act requires compliance with good business practice and prohibits the use of misleading comparative marketing. The marketing provisions in the Unfair Business Practises Act correspond to a great extent with the provisions in the Consumer Protection Act.

Marketing offences are also criminalised under the Criminal Code of Finland. Criminal sanctions can be imposed on the marketing entity where false or misleading information conveyed in marketing is significant from the point of view of the target group.

In addition to the aforementioned legislation, the healthcare industry practises self-regulation on marketing. This includes general marketing guidelines and guidelines on marketing on social media provided by The Finnish Medical Association as well as the monitoring of marketing of health services conducted by a supervisory board under the Finnish Medical Association. Moreover, the Code of Advertising and Marketing Communications Practice by the International Chamber of Commerce applies to marketing of healthcare services as well.

The general marketing guidelines by the Finnish Medical Association emphasise the truthfulness, appropriateness, reliability and fair practice of marketing. The severity of an illness or a symptom is not allowed to be used for intimidation nor is the use of superlatives allowed in marketing. The guidelines prohibit the use of any type of anonymous marketing

23 The Market Court, case MAO:315/18, 11 June 2018.

24 The Finnish Competition and Consumer Authority: Report on supervision of public procurements on 2017, 26 April 2018.

25 The Consumer Protection Act (38/1978).

26 The Unfair Business Practices Act (1061/1978).

on the internet, social media or search engines. Moreover, the private service provider shall not market other services outside its field nor shall the medical services be connected to product marketing.

For the time being, there are no specific regulations on the marketing of health services conducted by public entities or third-sector service providers, nor is there an authority supervising overseeing such marketing. Private and public service providers are thus treated differently with respect to the marketing of health services, and public service providers may market public healthcare services in ways prohibited from private entities. The Finnish Competition and Consumer Authority has deemed this an issue in the current system, and emphasis will be given to said issue in future reforms. Despite the lack of specific marketing regulations for public or third-sector service providers, public entities are nevertheless subject to principles of good administration such as the service principle, which sets a requirement for the marketing of public health services to be appropriate.

IX FUTURE OUTLOOK AND NEW OPPORTUNITIES

Having regard to the ongoing major health and social services reform, it is hard to predict how the healthcare sector will look in the near future. The reform package has been highly politicised and, thus, the detailed content of the reform is still subject to changes. As mentioned above, if successful, the reform would change the structure and organisation of the whole Finnish healthcare system and result in significant changes in legislation. It is expected that the reform would facilitate the entry and expansion of privately produced healthcare services.

Technological advances over recent years have also created new opportunities for healthcare service providers. For instance, new biobank legislation was introduced in late 2013, which has provided for a new field to emerge in the health sector.[27] In the field of e-health, a personalised health programme is envisaged by a network of public sector actors to pursue the creation of international business and innovation for personalised healthcare platforms by utilising data from different sources, such as biobanks or lifestyle data collected by the individuals themselves.[28] The ambitious goal for the programme is for Finland to become the global pioneer in the provision of personalised health by 2025.

X CONCLUSIONS

The current healthcare service system in Finland is heavily based on public funding and healthcare services are mainly provided by the public sector. Meanwhile, the role of private insurance is supplementary to the statutory scheme. The responsibility for organising healthcare is delegated to municipalities, which can provide basic social welfare and healthcare services independently, together with other municipalities, or purchase social welfare and healthcare services from third parties. The health and social services reform would, however, transfer these responsibilities from municipalities to counties, which would be created as part of the reform.

Despite the strong position of public healthcare in Finland, the number of private service providers has considerably increased in the 21st century. Demand of private healthcare

27 The Biobank Act (688/2012).

28 https://www.businessfinland.fi/en/whats-new/news/2018/personalized-health-program-begins/.

services is partly explained by the employers' responsibility to arrange basic healthcare for its employees. The private sector is expected to take on an even greater importance as part of the healthcare system once the health and social services reform may open up the market to new players.

Because the final scope of the health and social services reform is still unclear and is likely to change owing to conflicting political visions, it is yet impossible to forecast how exactly the reform would affect current legislation.

Appendix 1

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Kirsi Kannaste specialises in commercial dispute resolution with a particular focus on international arbitration and competition litigation. She serves as the co-head of Krogerus' healthcare and pharmaceuticals team. She is also an approved mediator for the Finnish Bar Association and frequently lectures on dispute resolution and healthcare and pharmaceuticals related topics.

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Terhi Kauti is the head of Krogerus' public procurement practice and serves as the co-head of the firm's healthcare and pharmaceuticals team. Ms Kauti has extensive experience in advising tendering companies and governmental authorities in all aspects of public procurement both for contentious and non-contentious matters. Her focus areas include healthcare and pharmaceuticals sectors. She also provides counsel on state aid and European law issues.

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Leena Lindberg heads Krogerus' healthcare and pharmaceuticals team and is the co-head of Krogerus' competition and regulatory practice. She has 14 years of experience from working with the national competition authority, where she, among other things, served as a member of the board of directors and led the merger control team. Ms Lindberg frequently advises undertakings within the healthcare and pharmaceutical sector in complex merger filing and antitrust cases as well as in various regulatory assignments, including proceedings before regulatory authorities and courts.

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