

**Consumer Council  
Submission to the LegCo Panel on Health Services on the  
Review of the Hospital Authority Drug Formulary  
(25 September 2006)**

1. The Consumer Council (CC) welcomes the opportunity to provide views on the review of the Hospital Authority (HA) Drug Formulary (the Formulary), for consideration of the LegCo Panel on Health Services.
2. CC provides its views from the perspective of consumer interests, and the guiding principles are as follows:
  - access and affordability: no one is to be denied treatment or drug therapy on account of impecuniosity;
  - certainty of supply: drugs should be made available at all times in adequate supply to achieve the desired treatment result;
  - quality and safety: drugs supplied should be with assured quality, especially for those supplied outside the Formulary;
  - transparency and fair process in determining the Formulary and the supply arrangement outside the Formulary;
  - consumer information: should be adequate, available and easily understandable; and
  - competition perspectives should be considered.

*Access and affordability*

3. CC considers it important that formulation of the self-financed drug items (SFI) should not limit the range of drugs in the Formulary for provision to public patients within the standard fees and charges. HA should, from time to time, assess the case for putting drugs under the Formulary instead of putting under the SFI, in line with HA's objective of ensuring the provision of medical and health services for the people of Hong Kong, including particularly that large section of the community which relies on subsidized medical attention.

*Quality and availability of drug supply*

4. With regard to the HA's decision to supply SFI to patients at HA's pharmacies in the following three circumstances where:
  - a. items not easily accessible in the community;
  - b. items covered by the Safety Net; or

- c. items need to be supplied for operational convenience, e.g. drugs needed by in-patient, day patients.

CC considers such an arrangement poses the least disruption to patients and assures quality and availability of the drugs to the convenience and benefits of patients.

#### *Process transparency*

5. On the subject of Safety Net, CC considers that the use of objective and transparent criteria for assessing a patient's affordability when receiving the appropriate amount of financial assistance from the Samaritan Fund is to be welcome.

6. However, there is no information in the review document concerning the number of complaints or enquiries received in relation to the new assessment criteria or the mechanism of the Safety Net since its introduction last year. In its consultation process, HA should make public information on patients' opinions/grievance with regard to access to Drug Formulary and safety net issues.

7. Regarding the mechanism of introducing additional drugs, CC previously suggested that HA should increase transparency by providing reasons for not including new drugs into the Formulary. Making public decisions of the HA Drug Advisory Committee and rationale behind such decisions may also help to enhance transparency of the mechanism. There should also be avenues open for suggestions to be made by interested individuals to bring new drugs to the attention of the Committee for consideration.

#### *Competition perspective*

8. On the concern whether, by supplying SFI drugs, HA pharmacies would be seen as engaging in unfair competition with private pharmacies and whether this would further increase the imbalance of private-public health services, CC recognizes this to be a legitimate concern which might be mitigated by the factors discussed below. CC considers it important that certain overriding principles as enshrined in the arrangement must remain in force to ensure continued benefits to consumer welfare and fair competition:

- a. Patients are free to obtain SFI supplies from private pharmacies.
- b. The supply of SFI at HA pharmacies to be confined to HA patients only and not to be opened to patients from the private sector.
- c. There are many reasons behind a patient's decision to obtain medical services from public hospitals and the supply of SFI is not likely to be the major draw factor.

- d. The SFIs available at HA' pharmacies are to be sold at 'market' price. It is understood that price component would include the element of cost plus an administration charge. HA would conduct market surveys to ensure the price of SFIs would be at a medium range. As such, drug prices at HA pharmacies will not be below market rate hence patients still have a choice to buy from private pharmacies at a lower price. Further, the drug prices of HA will also serve as a stabilizing force to drug suppliers from the private sector, which provides a competitive safeguard, unless higher drug prices are imposed as a supplementary means to deliberately deter patients from visiting public hospitals. This would appear to be unlikely given HA's mission.

9. It is understood that such an arrangement would not be considered to be anti-competitive in jurisdictions where competition laws are in force. Exemptions from the application of competition law can be given to aggregation of assets that would lead to market dominance (if the circumstances of HA should qualify) on public benefit grounds. The delivery by a dominant supplier in the marketplace of reasonably priced, safe and reliable pharmaceuticals to the community (particularly to citizens at the lower end of the socio economic scale) is clearly a public benefit goal that would override the need to maximize competition in the marketplace.

10. In the jurisdictions mentioned above, which have procedures to exempt possible anticompetitive practices on public benefit grounds, there are also procedures to review the exemptions if circumstances change at a later date, which call into question the need for exemptions. HA is in a position where it can periodically review its policy and consider the impact it is having in the marketplace. If needs arise, after a period of time when the full impact of its policy has taken effect, it can make any changes it considers warranted to address perceived problems in the market.

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