China Opens the Door Wider to Private and Foreign Investment in Health Care

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China's State Council on December 3 issued the Opinions on Further Encouragement and Guidance of Private Investment in the Establishment of Medical Institutions (关于进一步鼓励和引导社会资本举办医疗机构的意见, the "Opinions"), jointly promulgated by the National Development and Reform Commission, Ministry of Health, Ministry of Finance, Ministry of Commerce and Ministry of Human Resources and Social Security, which introduce several measures to promote the development of societal, i.e., non-state-owned, medical institutions. These developments constitute recognition that the dominant role of the state in the provision of medical care has impaired efforts to extend and raise the quality of medical care in China, and that the private sector, including foreign investment, can and should play a larger role. The Opinions were followed December 7 by a State Council press briefing and preceded by a favorable tax circular. We summarize the key provisions as follows:

1. Encouragement of Non-State-Owned Investment in Establishment of Medical Institutions

The Opinions encourage private investment, including foreign investment, in the establishment of medical institutions including both for-profit and non-profit medical institutions. Privately-invested medical institutions are to enjoy the same treatment as state-owned medical institutions including with respect to provision of the same scope of medical services. Privately-invested medical institutions will be incorporated after local governments formulate their health and medical plans, and priority will be given to privately-invested medical institutions when considering adjusting or increasing medical resources. Pursuant to the Opinions, foreign-invested medical institutions which currently fall under the "Restricted" category under the 2007 Guiding Catalogue of Foreign Investment in Industry will be elevated to the "Permitted" category. Foreign investment will be permitted in medical institutions not only in the form of an equity joint venture (EJV) or cooperative joint venture (CJV), as at present, but also in the form of a wholly foreign-owned enterprise (WFOE), with particular encouragement for investment in central and western China. For joint venture hospitals, the current 70% cap on foreign ownership will be gradually lifted, and this process has already begun to be implemented. For WFOEs, foreign investment will be permitted on a pilot basis with priority for investment from Hong Kong, Taiwan and Macau.

The procedures for approval of the establishment of foreign-invested hospitals will be simplified in accordance with the Opinions. The approval authority for the establishment of joint venture hospitals will be delegated by the Ministry of Commerce and Ministry of Health to their provincial-level counterparts while approval authority for the establishment of WFOE medical institutions will remain at the central level. As central government approval takes longer and may be subject to more stringed review, investors may be inclined to adopt a joint venture structure, particularly as the cap on foreign investment is lifted.

2. Encouragement of Private Investment in the Restructuring of

State-Owned Medical Institutions

The Opinions clearly provide that private investment is encouraged in the restructuring of state-owned medical institutions. The General Office of the State Council requires local governments to amend their regulations accordingly and revise any policies that may impede the development of non-state-owned medical institutions. The Opinions encourage private investment to participate in the reform and restructuring of state-owned hospitals, and the conversion of some state-owned hospitals into non-state-owned medical institutions.

3. Involvement of Non-State-Owned Medical Institutions in the State Medical Reimbursement System

Only medical institutions participating in the State Medical Reimbursement System are eligible for reimbursement through the social welfare benefits insurance system. Pursuant to the Opinions, non-state-owned medical institutions, including foreign-invested medical institutions, which implement the government's medical service and drug pricing policies will be eligible for participation in the State Medical Reimbursement System in the same manner as state-owned medical institutions.

4. Preferences for Non-State-Owned Medical Institutions

a. Tax

Pursuant to the Ministry of Finance and State Administration of Taxation's Circular Concerning Issues with Respect to Issues Concerning Enterprise Income Tax Exemptions for Non-Profit Organizations (财政部、国家税务总局关于非营利组织企业所得税免税收入问题的通知, November 11, 2009), non-profit medical institutions which are recognized as non-profit organizations will be eligible for Enterprise Income Tax ("EIT") preferences. In accordance with the Provisional Regulations on Business Tax (营业税暂行条例, as amended 2008), medical institutions may also enjoy Business Tax ("BT"; a turnover tax on services) exemptions with respect to medical services.

Pursuant to the Opinions, relevant preferential treatment will be granted to privately-invested medical institutions. Tax preferences with respect to EIT enjoyed by state-owned medical institutions will apply equally to private non-profit medical institutions. The Opinions also make clear that both non-profit and for-profit privately-invested medical institutions will be eligible for BT exemptions.

b. Land

Land use needed by privately-invested medical institutions will be incorporated into local government urban land-use plans and annual land-use plans. Pursuant to the Opinions, privately-invested medical institutions will be eligible for the same land use policies as state-owned medical institutions.

c. Additional Preferences

In addition, private medical institutions will enjoy the same prices as state-owned medical institutions with respect to utilities (including electricity, water, gas and heat). Positive support will also be provided to privately-invested medical institutions with respect to construction, equipment purchase and personnel training. Medical personnel interchanges between state-owned and privately-invested medical institutions will also be encouraged in accordance with the Opinions.

5. Health Insurance

The documents do not address health insurance but the central government in 2009 instituted policies to extend such insurance to 90% or more of the populace by 2011. It is as yet unclear whether current restrictions on foreign investment in this sector, based on its treatment as part of life insurance, will be relaxed to enable foreign-invested health insurance companies to play a larger role.

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