Charitable Hospitals
Charity at Market Rate

OOMMEN C KURIAN

In Maharashtra, the Association of Hospitals and its member charitable hospitals are attempting to back out of providing free and subsidised beds to poor patients under the Bombay Public Trust Act Scheme which is a legally mandated service in return for subsidies. They are deliberately confusing this scheme with another health scheme of the Maharashtra government which is a business opportunity at competitive rates. Should the government fall for the obfuscation by these hospitals, it will end up paying the private "charitable" hospitals at market rates for what the latter are supposed to provide free in return for heavy subsidies.

The author wishes to thank Ravi Duggal and Padma Deosthali for helpful comments.

Oommen C Kurian (*oommen@cehat.org*) is a researcher with the Centre for Enquiry into Health and Allied Themes, Mumbai.

The Maharashtra government has been implementing the Jeevandai Arogya Yojna in the state since 1997. Under this scheme surgeries related to heart, kidney and brain diseases and cancer treatment are provided free of cost mainly to people below the poverty line (BPL). In 2010-11, with a budget of Rs 111 crore 13,616 surgeries were performed at the designated network of government and recognised private/trust hospitals which were reimbursed later.[1] This scheme is now being replaced with the revamped Rajiv Gandhi Jeevandai Arogya Yojana (RGJAY) which is an insurance scheme based on the Rajiv Aarogyasri Scheme of Andhra Pradesh. It is aimed at the BPL (yellow card) and above poverty line (APL-orange card) families in Maharashtra. The scheme hopes to improve access to tertiary medical care for certain specialty services through an identified network of healthcare providers. The state government pays the premium in the eight districts where the scheme has started in a phased manner. The public, charitable and private hospitals are being empanelled and according to the chief minister, the new scheme will have a budget ranging between Rs 800 crore and 1,000 crore.[2] If this money is taken from the general health budget, the RGJAY through its focus on specialised tertiary care may end up causing further decline in the primary and secondary level care in Maharashtra's already weak public health system.

The RGJAY is an insurance-based tertiary healthcare scheme which covers inpatient and outpatient care across 30 identified specialised categories. The premium is paid by the government and the scheme works like any other private insurance-based scheme such as the Arogyasri or the Rashtriya Swasthya Bima Yojana (RSBY) whereby hospitals get paid by the insurance company for providing care to a set of enrolled patients based on pre-approved package rates. By design, the profit motive of these hospitals and insurance companies is the engine driving such schemes forward. This in itself may have severe access implications and corruption-related risks, as private providers have an incentive to over-provide profit-maximising procedures and services and neglect the others. However, in the current context, we are not looking at this aspect here. The point being made here is that the RGJAY is not a charity-based scheme under which free or subsidised care is provided by the hospitals.

The request for proposal (RFP) document for the RGJAY states that in order to be empanelled a hospital must have at least 50 inpatient medical beds with adequate spacing and supporting staff as per norms. It is also specifically stated that in case of charitable hospitals, 10% beds should be reserved for indigent patients and another 10% for economically weaker sections as per the provisions of Section 41AA of the Bombay Public Trust Act, 1950 (BPTA Scheme henceforth). It is out of the remaining 80% beds that 25% beds need to be reserved for beneficiary families under the RGJAY exclusively.[3] There is no room for confusion as it has been stated in unequivocal terms that what is offered as part of the RGJAY is over and above that offered by the high court mandated BPTA Scheme. The latter directs that:

> (1) The Charitable Trust Hospital shall be under legal obligation to reserve and earmark 10% of the total number of operational beds for indigent patients and provide medical treatment to the indigent patients free of cost and reserve and earmark 10% of the total number of operational beds at concessional rate to the weaker section patients as per the provisions of section 41AA of the BPT Act.
> (2) The Charitable Hospitals shall physically transfer 2% of the total patients' billing (excluding the bill of indigent and weaker section patients) in each month to IPF Account.[4]

Historically, there was resistance to the terms of the BPTA Scheme from the so-called charitable hospitals, many of which have become for-profit entities over time as Duggal (2012) discussed recently.[5] The charity commissioner's office has not been able to effectively monitor the functioning of the scheme, and for a long time, it was suspected that

conditions regarding free beds to the poor patients or Indigent Patients' Fund (IPF) are not being adhered to. Recently, 14 hospitals, including Lilavati, Breach Candy, Jaslok, Bombay, Hiranandani, and Saifee Hospitals, have appealed to the charity commissioner stating that they are currently incurring losses in the treatment of poor patients. Four of these hospitals got exempted from the scheme.[6] However, a sample survey by the state health department that followed indicated that the Jaslok, Breach Candy and Bombay Hospitals used only 4 to 4.5% of the 10% beds they had committed for use to treat the poor.[7] The charitable hospitals and their organisation, the Association of Hospitals (AOH) have also been trying through court interventions to stall the scheme over a number of years.

Gross Violation of Law

However, this doublespeak by the charitable hospitals and the AOH was nailed by the report of a committee set up by the Maharashtra government to review the performance of charitable hospitals. It found that the court directive to treat poor patients is not being followed. The committee report says that on an average only 4.03% of the earmarked beds (out of a mandated 20%) are being used. The Bombay Hospital here has 142 beds earmarked, out of the total 701. It was seen that only 42 poor patients were admitted in April and May 2011, and in June 2011 the number went down to 38. The report concluded that the charitable hospitals are simply not complying with the scheme.[8] However, in the absence of strong monitoring and information systems, even the veracity of such statistics is subject to question, although they prove beyond doubt that the law is being grossly violated. There is no way to verify if 4.03% of the 20% earmarked beds actually went to the people who are covered by the Act.

The AOH had appealed to the high court earlier in an effort to get rid of the BPTA Scheme as it exists. However, it has been unsuccessful. The public interest litigation that caused the free bed scheme to be constituted was disposed of in 2009 and in the final judgment the court observed that since the scheme was framed, further orders did not have to be passed. The court felt that there are sufficient safeguards for the hospitals who may feel aggrieved by any action under the scheme against them. There is a review petition by one of the hospitals under consideration but the legality of the scheme was established despite great efforts by the AOH and the charitable hospitals to sabotage it.

It is in this context that the claim by the members of the AOH that it is impossible for them to implement both the BPTA scheme and the RGJAY simultaneously needs to be examined.[9] As said earlier, apart from the fact that it targets the poor powered by government finances, the RGJAY has no element of charity whatsoever. It remains a scheme under which hospitals are paid by the Maharashtra government through an insurance provider for selected procedures and treatments at pre-fixed rate. According to newspaper reports, the rates fixed under it are 10% to 15% lower[10] than the usual hospital rates which is a normal business practice since the scheme will be giving these hospitals a guaranteed inflow of patients. A brief comparison of both the schemes is given.

A Comparison of Both Schemes

Scheme framed under Section 41AA of the Bombay Public Trust Act 1950 (BPTA Scheme)	Rajiv Gandhi Jeevandai Arogya Yojana (RGJAY)
Scheme for charitable hospitals	Public, private and charitable hospitals are empanelled
Obligation by law for various benefits as part of not-for-profit status, including free land, income tax exemptions, etc	An insurance scheme where government pays the premium for poor patients
10% free beds and 10% subsidised beds set aside for poor patients	The insurance company reimburses the hospitals within seven working days at package rates, for treating poor patients. 25% beds should be reserved for member families
Monitored by the Charity Commissioner	Monitored by the insurance company
Any health condition will be treated	A procedure driven scheme providing specialised tertiary care
Scheme operational all across Maharashtra and if implemented well, it can provide substantial health resources at no extra cost. However, neither the government nor the Charity Commissioner has shown the will to consolidate this resource hitherto grossly underutilised.	Currently being run in eight districts, viz, Gadchiroli, Amaravati, Nanded, Sholapur, Dhule, Raigad, Mumbai city and Suburban Mumbai. To be expanded progressively across Maharashtra, at an extra cost of around Rs 1,000 crore per year

The expert committee on charitable hospitals constituted by the Bombay High Court headed by S B Dhumal had noted in 2006 that

> Besides getting exemptions from payment of contribution towards 'PTA Fund', public charitable trusts which are running hospitals, nursing homes, dispensaries are getting other facilities and concessions like land on concessional rates and land on lease at concessional rates from Government of Maharashtra and Local Authorities. The charitable hospitals are also registered under the provisions of Income Tax Act, 1961 and are getting exemptions in payment of Income Tax on the ground that they are providing medical aid/relief at free or concessional rates to the poor and needy persons in furtherance of the objects of their trusts. Charitable hospitals had received concessions/exemption in payment of Octroi on import of hospital equipments vide notification No 279/82-Cus-FNO 460/96/83-Cus V (GSR 767-E), 30 September 1983 (Dhumal Committee Report, 2006).

As the country endeavours to move towards Universal Health Care, the Maharashtra health planners would do well to acknowledge the beds earmarked under the BPTA Scheme as unutilised resources and available with the government. This becomes all the more important as private beds available "on paper" for the poor in the state are substantial. According to the Central Bureau of Health Intelligence figures, Maharashtra has 50,000 government hospital beds made up of central, state and local government bodies put together. Data received by the charity commissioner's office (incomplete as only 25 out of 35 districts of Maharashtra have reported data, and not all hospitals in the reported districts have reported data) suggests that there are 6,155 hospital beds reserved for the poor, across 281 hospitals.[11] Thus, a conservative estimate would be that there are around 10,000 extra beds which the government has control over and are available across the state, reserved for "indigent patients" and patients from the "weaker sections", making an extra 20% beds available for the public sector. Given that most of these charitable hospitals are the ones offering specialised services, the real quantum will be in fact much more. There is a grave need for designing

a formal referral system between public hospitals and private charitable hospitals whereby these grossly underutilised beds become available to the public. Delhi has already put in place such a scheme, following a similar court directive.[12]

However, the AOH has used the launch of the RGJAY as a window of opportunity and a convenient excuse to further efforts at stalling the high court scheme of 10% free beds. The irony is that in any case it did not comply with the scheme. In its meeting with state authorities, the AOH expressed its reservations in joining the scheme, pointing out that it "already" provides charity in the form of free or subsidised treatment to the poor.[13] In a cunning move, the AOH is using it to achieve what they have been wanting for half a decade. In order to turn enrolment in these schemes into an either/or proposition, the AOH is trying to present the purely business practice of bulk purchases at 10-15% lower prices as "charity". Unfortunately, the government seems to be falling into the trap and has started negotiating with them.

Saboteurs

The AOH and member hospitals are trying to hijack the situation by misleading the government on the legal status of the scheme, and hiding the fact that the RGJAY is a business opportunity at competitive rates, while the BPTA Scheme is a legally mandated service guarantee in return for subsidies received in the past and present. The AOH, which represents a set of hospitals that call themselves charitable while practising profit maximisation should not be allowed to sabotage the legally mandated scheme by manipulating the government's enthusiasm to "launch" yet another popular insurance scheme with fanfare, whatever may be the welfare costs. Going by recent news coverage, it is clear that the AOH's ultimate aim will be to use empanelment to the RGJAY scheme as a negotiating point in their efforts to back out of the provisions of the BPT Act, hoping to arm-twist the government to make a formal request to the court.

During the negotiations with the AOH, Jayant Banthia (additional chief secretary, health and family welfare) had reportedly said: "They can choose to get out of the BPT Act's mandate and join the scheme, and we can make legal provisions".[14] Bhushan Gagrani (secretary, public health) said, "After all, the purpose of both the programmes is the same – to serve the poor. The panel will explore the possibility of combining them and consider the legal aspects that could arise out of such a move."[15] All these signals from the government point towards a possible situation where these schemes will be merged for the charitable hospitals on terms set by the hospital lobby. This will be disastrous as it would mean that from now on, the government will be paying the private "charitable" hospitals *at market rates* for the 10% free beds and 10% subsidised beds that they are anyway supposed to provide the poor patients in return for the heavy subsidies received from the government. For these hospitals, the RGJAY will become a scheme whereby the Maharashtra government ends up financing their legally mandated "charitable activities".

Even if the schemes are merged purely for monitoring purposes, it needs to be guaranteed that charitable hospitals do not get away without providing the free and subsidised beds mandated by the high court. For the private hospitals, being part of the RGJAY Scheme may be voluntary, but for charitable hospitals which have got plenty of direct and indirect benefits from the government, the participation should be made mandatory and the care provided should be over and above the legally mandated 10% free and 10% subsidised beds as per the BPTA Scheme. A robust audit of the existing BPTA Scheme to assess the level of compliance by the charitable hospitals can be an important step towards this goal. Importantly, such an audit needs to be followed up with some concrete steps to assure recovery of the illegal profits earned through the historical violation and non-compliance of the BPT Act. A strong message needs to be sent to the healthcare providers that violations of the law will not be tolerated.

NOTES

1 Accessed at http://www.maha-arogya.gov.in/projectandschemes/Jeevandaiaarogya/default.htm, on 31 August 2012.
2 *Hindu Business Line* (2012), "Rajiv Gandhi Health Scheme to Cover Maharashtra in Phases", accessed at http://www.thehindubusinessline.com/industry-and-economy/economy/article2766388.ece, on 31 August 2012.
3 Government of Maharashtra (2011), Request for Proposal (RFP) dated 02/06/2011, page 152.
4 Accessed at http://mahacharity.gov.in/static_pages/hospital.php, on 31 August 2012.
5 Ravi Duggal (2012), "The Uncharitable Trust Hospitals", *Economic & Political Weekly*, Vol XLVII, No 25.
6 Sumitra Deb Roy (2012), "4 Private Hospitals to Stop Treating Poor Patients Temporarily", *The Times of India*, 18 April, accessed at http://articles.times ofindia.indiatimes.com/2012-04-18/mumbai/ 31360858_1_charitable-hospitals-poor-patients-lilavati-hospital, on 31 August 2012.
7 Lata Mishra et al (2012), "Top Hospitals Didn't Use Even Half of the Beds Marked for Poor", *Mumbai Mirror*, 10 May, accessed at http://mumbaimirror.com/article/15/2012051020120 5102245572968e59efd2/ Top- hospitals-didn%E2%80%99t-use-even-half-of-the-beds-marked-for-poor.html, on 31 August 2012.
8 *Daily News and Analysis* (2012), "Hospitals Not Following Diktat to Admit Poor Patients: Report", 13 May, accessed at http://www.dnaindia.com/mumbai/report_hospitals-not-following-diktat-to-admit-poor-patients-report_1688114, on 31 August 2012.
9 Jyoti Shelar and Santosh Andhale (2012), "State Panel to Review How Poor Patients Can Be Served Better", *Mumbai Mirror*, accessed at http://www.mumbaimirror.com/article /2/20120 5032012050320525545 3114e3447/ State-panel-to-review-how-poor-patients-can-be-served-better.html?pageno=1, on 31 August 2012.
10 Jyoti Shelar (2012), "'We Can't Act against Hospitals Run by Pvt Charitable Trusts'", *Mumbai Mirror*, accessed at http://mumbaimirror.com/article/2/2012042620120426213402968694f1584/%E2% 80%98We-can%E2%80%99t-act-against-hospitals-run-by-pvt-charitable-trusts%E2%80%99.html, on 31 August 2012.
11 Information obtained from http://mahacharity.gov.in/static_pages/pdf/Beds%20in%20Hospitals.pdf, accessed on 31 August 2012.
12 Information obtained from http://www.delhi.gov.in/wps/wcm/connect/DoIT_Health/health/related+links/ information+regarding+free+treatment, accessed on 31 August 2012.
13 Menaka Rao and Priyanka Vora (2012), "Govt Scheme Helps Poor Get Treated for Major Ailments", *Hindustan Times*, 23 July, accessed at http://www.hindustantimes.com/India-news/Mumbai/Govt-scheme-helps-poor-get-treated-for-major-ailments/Article1-893908.aspx, on 31 August 2012.
14 *Asian Age* (2012), "State May Move HC If Hospitals Don't Join Insurance Scheme", 16 May, accessed at http:// www.asianage.com/mumbai/state-may-move-hc-if-hospitals-dont-join-insurance-scheme-291, on 31 August 2012.
15 Jyoti Shelar and Santosh Andhale (2012), op cit.