

Healthcare service fees hike in Kuwait

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Recently, almost two decades after the issuance of Law No. 1 of 1999 on foreign health insurance and the imposition of fees against medical services, the Ministry of Health decided to increase the health care service fees at public hospitals and clinics throughout Kuwait for expatriate residents and visitors.

The underlying principle behind the price hike for medical care has been allegedly the heavy financial burden borne by the Ministry of Health, as the daily services costs became a general burden on the budget of the State, primarily due to the rise in the prices of medication and medical equipment globally.

The price increase is expected to assist in the increase of non-oil revenues which, will in turn positively affect the public budget and to curb the issue of the rising number of expatriates and visitors who under the previous health regime were taking advantage of the largesse of free or nominal healthcare charges in the country by visiting Kuwait only to receive medical treatments, from routine check-ups to more complex surgeries.

In the spirit of tackling the aforementioned issues, the Ministry of Health issued two ministerial decrees regarding the new health care service fees at public hospitals and clinics; Ministerial Decree 293 of 2017 applying to expatriate residents of Kuwait registered in the State's health insurance system and Ministerial Decree 294 of 2017 applying to expatriate visitors not registered in a State's health insurance system. The implementation of both decrees has already started, effective from 1st October 2017.

The increase in the medical fees was imposed to the following health services, including but not limited to: natural child delivery, open heart surgery, nuclear medicines, radiology tests, laboratory tests and prostheses.

According to the ministerial decrees, the new health fees have been significantly raised from 50% up to 500% in some cases, with the increase being rolled out to expatriates entering the country on tourist visas first, then to expatriate residents.

It is apparent that the new higher charges for medical services will force expatriates to give up their right of receiving medical treatment services at public hospitals and clinics and will instead opt for private ones. The costs for receiving treatment in private hospitals and clinics will be similar to the costs of receiving treatment in public hospital and clinics and as long as the private clinics and hospitals do not raise their current medical fees, there will be less crowding and no need to make appointments.

It is worth noting that the Ministry of Health has provided for exemptions for certain categories from all fees of health services provided thereto by the public general and specialized hospitals. Such exemptions are applicable to the below listed categories:

- a. Residents of social welfare homes;
- b. Sons and daughters of the Kuwaiti woman married to a foreigner;

- c. Disabled sons and daughters of the Kuwaiti woman married to a foreigner,
- d. Domestic labor compound residents in view of their vulnerability to health problems that require admission to hospital to undergo medical examinations, be operated on or be accommodated therein;
- e. Emergency cases of transit passengers who suffer health issues while they are at Kuwait International Airport for transit;
- f. All foreign prisoners;
- g. Residents who live in in Kuwait without having the appropriate legal residency documentation but are holders of a valid identification card from the Executive Committee for Illegal Residents Affairs;
- h. Members of official delegations visiting the State of Kuwait who are vulnerable to health problems;
- i. Scholarship students of the Ministry of Education; and
- j. Non-Kuwaiti children with cancer who are under the age of 12 years and who have a valid residence provided that the initial diagnosis of the disease shall have been conducted in Kuwait.

In addition to the aforementioned exemptions, the Ministry of Health also exempted certain categories from the fees payable for health services related to X-ray and nuclear medicine in the public affiliated hospitals and healthcare centres as follows:

- a. All the employees of the Ministry of Health along with their spouses and children in accordance with the following rules:
 - The spouses and children who are entitled to this exemption must have a valid residence permit;
 - The daughter must not be married or employed;
 - The son must be below 21 years of age, or has come of 21 years of age but still studies at a High Institute or a university until he becomes 25 years old and is not employed (a certificate to this effect must be produced); and
 - The children with impediments to legal competence.
- b. The non-Kuwaiti wife of a Kuwaiti national and the Kuwaiti child of a non-Kuwaiti mother.

Even though more exemptions with regard to medical fees are under way as per the sources of the Ministry of Health, it should be noted that the increase of the medical fees, especially relating to expatriates residents, has been the apple of discord and provoked controversies and long debate between the parliamentary circles and lawmakers, not only as to its legal dimension and compliance with the Kuwait law and but also as to its humanitarian dimension, given the fact that the increased fees directly and primarily impact the limited income expatriate groups.

Therefore, it did not come as a surprise that the legality of the Ministerial Decree 293 of 2017 has been recently challenged and a case filed against the Ministry of Health's decision to increase the health fees for expatriate residents. The Administrative Division of the Court of First Instance held its first hearing, reserving judgment for October 25th 2017.

During the said hearing, the Defence Counsel for the Government sought to dismiss the case on the grounds that the Plaintiff did not have a connection or interest in the case as he was an advocate. The Plaintiff argued that he filed the case as a citizen and employer of expatriate staff and not under his advocate's identity.

As for his interest in the case, he claimed that the ministerial decree will be deleterious to him and

place an additional financial burden on him, not to mention that the country's reputation and humanitarian status would be deeply wounded. Alongside the Plaintiff, another expatriate resident joined the proceedings.

During the Plaintiff's submission, it was further argued that the challenged ministerial decree would tarnish the reputation of Kuwait in the humanitarian field, considering its vast global outreach efforts, as the Ministry of Health did not examine other aspects and potential consequences.

Additionally, the Plaintiff claimed that the Ministry of Health did not take into consideration the compatibility and commensurability principle applicable to the issuance of any administrative decree, as the said decree provides for huge medical fees regardless of the fact that the majority of the non-Kuwaiti residents are low-paid employees, which renders the decree illegal.

A constitutional challenge was further raised on the grounds that the decree is violating the constitution, mainly its Article 29 which stipulates that people are equal in the human dignity and before the law in the public rights and duties, without segregation among them because of race, origin, language or religion, clarifying that the term "people" encompasses Kuwait citizens as well as non-Kuwaiti residents which makes them equally entitled to receive healthcare services.

The Plaintiff requested that the constitutional challenge be referred to the Constitutional Court for a decision and sought a summary stay of enforcement of the decree pending the resolution of the case. The court, however, disregarded his request.

We are yet to see the findings of the Court and if the ministerial decree shall be repealed or amended.

Ultimately, the price hike on the medical fees is still unclear on how it will impact the entirety of the health care sector in the long term and whether it will breed a shift from public to private health care. However, it is apparent that its recent implementation has sparked conflicting arguments, even though the Ministry of Health always strives to offer the best health services for all the individuals.