



Australian Government

Department of Health and Ageing

Ms Ebony McNally
Competition & Consumer Policy
Intelligence, Infocentre & Policy Liaison Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Ms McNally

**SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION'S SENATE REPORT ON PRIVATE HEALTH INSURANCE**

Thank you for your letter requesting the Department of Health and Ageing's (the Department) views on publishing the Department's submission of September 2011 to the Australian Competition and Consumer Commission (ACCC) for the report to the Senate on anti-competitive or other practices by health funds and providers in relation to private health insurance.

The Department agrees to the ACCC publishing the majority of the content provided in its submission and considers its publication would aid understanding of health insurer and health service provider obligations and consumer rights in the private health insurance industry.

The Department advises that the following content provided in its September 2011 submission to the ACCC is now inaccurate and may not be included for publication:

- (page 4) the last sentence in the final paragraph under *Exclusionary Products* of Question 3 regarding the date legislative changes are to take effect to improve the consumer Standard Information Statements through the *Private Health Insurance Complying Product*) *Rules Exclusionary Products* is now incorrect and should not be published to avoid confusion.

The Department's response to Question 2 of the submission refers to legal advice regarding third line forcing provided by the ACCC to the Department. It is the ACCC's decision whether to disclose the advice provided and whether disclosure will affect any legal professional privilege the ACCC may wish to apply.

A copy of the Department's submission, with the content to remain confidential as marked, is provided at Attachment A.

Publishing the remainder of the information provided in the Department's submission would assist consumers, private health insurers and health service providers to understand their respective rights and obligations, particularly with regard to transparency of information provided by insurers, out-of-pocket expenses for consumers, and avenues for complaint.

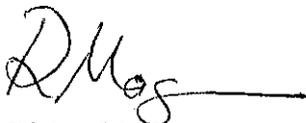
Information concerning complaints to the Private Health Insurance Ombudsman (PHIO) about Informed Financial Consent (IFC) may raise a greater awareness among health service providers and hospitals, encouraging the implementation of measures to reduce the incidence of these complaints, which is particularly important for those providers with limited patient contact. The PHIO data provided in the submission may also assist relevant peak bodies to identify complaint trends and target providers who would benefit from more information about IFC obligations.

The submission would assist consumers to gain an awareness of the options available to research and compare private health insurance products and an understanding of the legislative basis for insurers' obligations to provide transparent information regarding all of their health insurance products through the annual provision of Standard Information Statements.

As noted in its submission, the Department is not aware of anti-competitive practices in relation to the contractual arrangements between private health insurers and health service providers.

Please contact Kate Medwin, Director, Quality and Communications Section on (02) 6289 9057 or kate.medwin@health.gov.au if you have any queries.

Yours sincerely



Richard Magor
Assistant Secretary
Private Health Insurance Branch

7 February 2012



Australian Government

Department of Health and Ageing

Department of Health and Ageing submission

to

**AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION**

**REPORT TO THE SENATE ON ANTI-COMPETITIVE
AND OTHER PRACTICES BY HEALTH FUNDS AND
PROVIDERS IN RELATION TO PRIVATE
HEALTH INSURANCE**

September 2011

The Department of Health and Ageing (the Department) welcomes the opportunity to make this submission to the Australian Competition and Consumer Commission (ACCC) for the report to the Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance.

The Department provides the following comments in relation to the preliminary issues raised by the ACCC.

- 1. The *Competition and Consumer Act 2010* applies to the complex set of arrangements that exist between private health insurance sector participants. Examples of such relationships could include negotiations between:**
- private hospitals and health funds;
 - individual professionals and private hospitals;
 - individual professionals and health funds; and
 - consumers and health funds and/or private hospitals and/or individual professionals.
- a) The ACCC seeks comment on any developments or trends in the sector in 2010-2011 that have impacted on these contractual arrangements.
- b) The ACCC understands that differences in bargaining power may affect the outcome of Hospital Purchaser Provider Agreement (HPPA) negotiations both in and outside of the legislated default benefit regime. Submissions addressing these issues are of interest to the ACCC.
- c) The ACCC welcomes any submissions about existing industry codes of practice which regulate contract negotiations between hospitals and health funds.

The Department has no evidence of anti-competitive practices in relation to the contractual arrangements between private health insurers and service providers.

In the first instance, any allegations concerning contractual issues are referred directly to the Private Health Insurance Ombudsman (PHIO) who is empowered under the *Private Health Insurance Act (2007)* to investigate and mediate any such issues.

- 2. Please provide any views you/your organisation may have on third line forcing as it applied to preferred provider schemes.**

The Department has no reason to dispute the ACCC's view, provided to the Department on 2 July 2011:

"The ACCC has on a number of occasions assessed whether private health insurers; through their preferred provider arrangements, are engaging in conduct in contravention of the third line forcing provisions contained in section 47 of the CCA."

"The ACCC has again assessed these arrangements and remains of the view that the conduct engaged in by the private health insurers is unlikely to constitute a contravention of section 47 of the CCA."

3. Issues surrounding lack of consumer awareness of gaps and exclusions in private health insurance are not new and have been the subject of comments in previous ACCC PHI reports:

- Please comment on any trends in the private health insurance sector affecting informed financial consent in the 2010-11 period.
- Have you identified any trends in advertising private health insurance during the 2010-2011 period? If so, please provide details.

Informed Financial Consent

Informed Financial Consent (IFC) involves the provision of cost information to patients and persons responsible for paying the costs of treatment, including notification of likely out-of-pocket expenses (commonly referred to as gaps), by all relevant service providers (preferably in writing), prior to treatment or admission to hospital. Out-of-pocket costs occur when patients are charged more for treatment than the amount covered by Medicare and any applicable private health insurance. Most unexpected out-of-pocket costs occur with medical specialists who have limited patient contact (anesthetists, pathology and radiology services, and surgeon's assistants), primarily because a large number of patients use these providers. Bulk billing rates for these services are generally low, for example, of the in-patient services bulk billed nationally during 2010-11, only 8.8% were for pathology services, with 9.2% bulk-billed in 2009-10, and 8.8% in 2008-09.

The Department and the PHIO have continued to work closely with organisations affiliated with doctors over several years on a range of measures aimed at increasing the incidence of IFC obtained by medical specialists, including those with limited patient contact.

Complaints to the PHIO about IFC in regard to hospital gaps have increased in 2010-11, compared to 2009-10. Complaints about medical gap issues also increased during 2010-11, compared to 2009-10 (this is based on medical gap complaints, which are not necessarily IFC complaints). In total, the PHIO registered 154 complaints in 2010-11 about IFC and medical gap issues compared to 99 complaints in 2009-10. The reasons for this increase are unknown. However, it can be speculated that the increases are due to greater awareness by consumers of IFC and their associated dissatisfaction when their expectations are not met.

The PHIO received approximately 30 complaints during the June 2011 quarter from patients of Ramsay hospitals about the imposition of a mandatory incidental fee for access to Foxtel television and Wi-Fi services during their hospital stay. Ramsay charges \$25 for overnight hospital admissions and \$15 for day stay patients (the day admission charge includes a gown which patients can take home with them). The PHIO is investigating consumer concerns about these fees and has recently been advised by Ramsay that it has decided not to charge the \$15 day stay fee once the stock of purchased gowns is depleted (approximately September 2011).

Exclusionary Products

The structure of private health insurance products has continued to change with an increase in the number of exclusionary products available to consumers. The Private Health Insurance Administration Council data shows that as at June 2011, 27.6% of hospital treatment policies were exclusionary, compared to 24% in June 2010 and 12.7% in June 2009. While the number of exclusionary products has significantly increased in recent years, they remain small as a proportion of all products.

In 2010-11, the PHIO received a total of 427 complaints relating to the level of cover provided by health insurance policies. Of these complaints, 170 (40%) related to hospital exclusions and restrictions.

Health insurers are required to provide information on each health insurance policy in a standard format for consumers, since legislative changes to the *Private Health Insurance Act 2007* (the Act) came into effect on 1 April 2007. Standard Information Statements (SIS) for each private health insurance product are available on the PHIO consumer information website www.privatehealth.gov.au. This enables consumers to compare a simple one page summary of each available policy. The SISs are also used to prompt consumers to consider their health needs and review any restrictions or exclusions they may have on their policies.

In 2011, the Department undertook a review of the SISs and identified issues relating to the content and structure of SISs which may impact on the legislative compliance of insurers, and the ease with which consumers can use and understand the SISs.

The Department aims to resolve these issues by improving the SISs and related information available to consumers through minor changes to the *Private Health Insurance (Complying Product) Rules* and additions to the SIS guides which are hosted on the PHIO consumer information website www.privatehealth.gov.au. [REDACTED]

Private Health Insurance Advertising

Apart from advertising by private insurance brokers and private health insurers, there are presently no Government campaigns advertising private health insurance. The Government fosters consumers understanding of private health insurance through the PHIO hosted website, www.privatehealth.gov.au. The website provides consumers with information on the range of private health insurance products offered by health funds. A Consumer Website Reference Group, comprised of PHIO staff, private health insurance industry representatives, and staff from the Department meet regularly to discuss the information available, use and effectiveness of the website.

4. The ACCC would welcome further information and comment on any initiatives or developments over the 2010-2011 period including:

- the development of industry-run online tools allowing consumers to find and compare healthcare specialists in their local area;
- the development of private health insurance comparison tools to compare the cost and terms and conditions of private health insurance policies;
- moves by private health insurers to provide preventative and primary health services; and
- comments on the role of allied health service providers and their relationship with the private health insurance sector.

PHI Comparison Tools

The Department is not aware of any widespread move for industry-run tools that allow consumers to locate and compare healthcare specialists in their local area. This information is typically sourced from a patient's general practitioner at the time of referral to a healthcare specialist. However, it is understood a small number of health insurers are developing online

services that will allow members to find and compare healthcare providers, eg. clinicians and allied health professionals, within their local area. Such tools are very much in their infancy, hence their usefulness for consumers has not yet been assessed.

The PHIO hosted website, www.privatehealth.gov.au, is a tool for consumers to compare the features and price of all complying private health insurance products available in Australia. In 2010-2011, the use of the website increased to 311,572 unique visitors, compared to 264,692 in 2009-2010 and 195,971 in 2008-09.

The website provides information about private health insurance and how it works, and other services to help consumers choose an appropriate insurer and product. Consumers can access a Lifetime Health Cover (LHC) calculator to work out the LHC loadings that may be payable as well as links to information on the hospitals in each State and Territory that have agreements with insurers. This assists consumers to choose a hospital where they can be treated with no gap, or known gap, provided their treating doctor has admitting rights at that hospital. The website also provides links to the insurers' websites so consumers can check which medical practitioners have gap cover arrangements with the insurer.

The website has a search engine that enables consumers to browse Standard Information Statements (SIS) for each private health insurance product available in Australia. Each SIS shows important price and benefit information on each private health insurance product.

The Department has been monitoring the use and effectiveness of the SISs and will shortly complete a review to ensure that the SISs continue to provide detailed and unambiguous information to consumers about their private health insurance policies.

Chronic Disease Management Programs

The Private Health Insurance (Health Insurance Business) Rules 2010 allow insurers to provide and pay benefits for prevention and Chronic Disease Management Programs (CDMPs). Insurers are increasingly investing in these programs to encourage their members to manage or prevent the onset of chronic disease and to minimise avoidable hospital admissions. The most common programs target cardiovascular diseases and diabetes.

Health insurers are not obliged to provide CDMPs to their members and are free to determine for themselves any programs they wish to offer, or choose to pay benefits for. CDMPs are intended to either reduce complications in a person with a diagnosed chronic disease, or prevent or delay the onset of chronic disease for a person with identified multiple risk factors for chronic disease as defined under Rule 12 of the *Private Health Insurance (Health Insurance Business) Rules 2010*.

CDMPs are currently offered by health insurers at no additional cost, providing that prospective participants meet their insurers' eligibility requirements.

Allied Health Services

The private health insurance rebate for allied health services falls under the general treatment policies provided by health funds. The Department is aware that some health insurers are operating health care centres providing dental and optometry services to both members and non-members and this trend may increase among health insurers. The arrangements between allied health service providers and private health insurers are commercial decisions for insurers.

5. The ACCC encourages feedback on the utility of the PHI report to the private health insurance sector and consumers.

The Department is unable to comment on the utility of the PHI report to the private health insurance sector and consumers.