MinterEllison

22 July 2021

BY EMAIL

Michael Pappa
Analyst, Competition Exemptions
Australian Competition & Consumer Commission
Level 17 | Lonsdale Street
MELBOURNE VIC 3000

Dear Michael

Application for authorisation AA1000542-1: Provision of template contracts for the Honeysuckle Health Buying Group

We refer to the application for authorisation by nib health funds limited (**nib**) and Honeysuckle Health Ltd (**Applicants**) dated 6 May 2021 (**Application**) and your email dated 16 July 2021.

As requested, please find enclosed template contracts expected to be provided under the Honeysuckle Health Buying Group. These include a template nib Hospital Purchaser Provider Agreement (**HPPA**) and a template Medical Purchaser Provider Agreement (**MPPA**) that is currently used by nib for the Clinical Partners Program (**CPP**). The Applicants have not developed at this stage any agreements to be used by future participants of the HH Buying Group or other types of value-based contracts.

The template HPPA and MPPA are provided to you on a confidential basis and sections of this letter are also confidential to the Applicants. The Applicants request that the ACCC treat the template HPPA and MPPA in their entirety, and the sections highlighted in yellow in this letter, as strictly confidential and that they are not published on the ACCC's public register. We note that the MPPA for CPP has been shared previously with the Department of Health, the Australian Medical Association and the Australian Orthopaedic Association, on a confidential basis.

In relation to the MPPA for CPP, we note that clause 7.1(g) of the MPPA for CPP provides that the medical specialist shall admit eligible patients to undertake at-home rehabilitation only where it is clinically appropriate to do so. The discretion to make this decision is held entirely by the medical specialist and there is no quota for a proportion of patients to use this program. It is an additional option for the medical specialist and the patient to consider and if they both agree that at-home rehabilitation is a good option, then this can be facilitated by nib through its third party at-home rehabilitation providers.

The Applicants submit that currently, the location of rehabilitation is generally determined by hospitals rather than medical specialists and hospitals do not have a financial incentive to refer patients to third parties to receive at-home rehabilitation or to provide this service themselves as they are generally paid by health insurers per day that a patient is admitted at the hospital. Hospitals have a significant financial interest to refer patients to inpatient rehabilitation as a substantial proportion of benefits paid for an episode of inpatient care can be attributed to inpatient rehabilitation. The MPPA for CPP provides an additional option of home rehabilitation for medical specialists and patients to consider, where appropriate. This decision is not influenced by the Applicants.

Further, the Applicants do not provide any financial incentive for medical specialists to choose home rehabilitation over inpatient rehabilitation. As you will see in Schedule 2 of the MPPA, the payment received by the medical specialist for a certain treatment does not vary, irrespective of whether post-surgery rehabilitation is conducted at home or in-hospital.

The MPPA demonstrates the falsity of the allegations raised by some interested parties that nib requires medical specialists to push a percentage of their patients into cheaper treatment options such as at-home rehabilitation programs (see submission made by Stephen Milgate at the pre-determination conference). This is clearly not a requirement under the MPPA, nor does the MPPA impose any financial influence on the decision of where rehabilitation should occur for patients.

We will provide a full response to the other submissions made in the pre-decision conference in due course.

Please do not hesitate to contact us if you have any questions in relation to this response or require any further information.

Yours faithfully
MinterEllison

Contact: Noelia Boscana
OUR REF: 1313530

MinterEllison

28 July 2021

BY EMAIL

Michael Pappa
Analyst, Competition Exemptions
Australian Competition & Consumer Commission
Level 17 | Lonsdale Street
MELBOURNE VIC 3000

Dear Michael

Application for authorisation AA1000542-1: Provision of template contracts for the Honeysuckle Health Buying Group

We refer to our letter to you dated 22 July 2021 enclosing template contracts expected to be provided under the Honeysuckle Health Buying Group, and your email to us dated 26 July 2021 requesting that we remove the redactions from the letter and from parts of the template contracts. Capitalised terms in this letter are defined in the application for authorisation by nib health funds limited (**nib**) and Honeysuckle Health Ltd (**Applicants**) dated 6 May 2021 (**Application**).

The Applicants have reconsidered their request for confidentiality and are prepared to allow the entirety of the letter dated 22 July 2021 to be published on the ACCC's public register. We **attach** a copy of this letter with no highlighting.

The Applicants maintain their request that the ACCC treat the template HPPA in its entirety but are prepared to allow some parts of the MPPA to be published on the ACCC's public register. The Applicants submit that the template HPPA is not relevant to the interested parties' allegations as there are no aspects of that contract which have been criticised or the subject of any false allegations in the written submissions or during the pre-decision conference. The Applicants are comfortable to disclose the relevant clauses of the **attached** template MPPA which relate to allegations posited by the interested parties. These include clauses regarding the clinical independence of Providers, at-home rehabilitation, and the payment of benefits to Providers to demonstrate that the Proposed Conduct is not linked to any clinical pathway. The Applicants request that the sections highlighted in yellow in the attached template MPPA are treated as strictly confidential and that they are not published on the ACCC's public register.

The Applicants are also comfortable for this letter to be published on the ACCC's public register.

Please do not hesitate to contact us if you have any questions in relation to this response or require any further information.

Yours faithfully
MinterEllison