



**Private Healthcare Australia Limited –
Application for authorisation AA1000487
Interim authorisation decision
2 June 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000487, lodged by Private Healthcare Australia Limited (**PHA**) on 1 April 2020 in response to the COVID-19 pandemic.
2. PHA has applied for authorisation on behalf of itself, its members, and Members Health Fund Alliance and its members (together, the **Participating Parties**) (listed in **Annexure A**).
3. PHA has applied for authorisation to enable the Participating Parties to make and give effect to arrangements, and to discuss and share information with each other in relation to broadening private health insurance coverage to include COVID-19 treatments and modes of treatment that substitute for face-to-face interaction or admission to hospital, providing financial relief regarding insurance premiums, and other measures as notified to the ACCC to respond to the COVID-19 pandemic.
4. The ACCC initially granted interim authorisation to the Participating Parties on 8 April 2020. Subsequently, the ACCC has decided that further conditions are appropriate to ensure greater transparency of activities occurring pursuant to the interim authorisation. The ACCC has revoked the interim authorisation granted on 8 April 2020, and substituted this conditional interim authorisation.
5. The ACCC has granted conditional interim authorisation for the conduct described at paragraph 7 below, subject to the conditions described from paragraph 16 to paragraph 28.
6. Interim authorisation commences immediately and remains in place until:
 - a. it is revoked;
 - b. the date the ACCC's final determination comes into effect; or
 - c. the date on which the application for authorisation is withdrawn.

The application for authorisation

7. PHA, on behalf of the Participating Parties, seeks authorisation to discuss and implement a coordinated response regarding the COVID-19 pandemic to provide to people covered by a health insurance policy (**Members**). In particular, PHA seeks authorisation to enable the Participating Parties to make, and give effect to, any contract, arrangement or understanding between them, and to discuss, engage and share information with each other, in relation to:

- broadening coverage under health insurance policies to include treatment for Members that contract COVID-19¹;
- broadening health insurance cover for treatment received by telephone or videoconferencing or other modes of treatment that substitute for face-to-face interaction;
- providing treatment in Members' homes as a substitute for an admission to hospital;
- providing financial relief for Members from paying health insurance premiums such as postponement of premium increases and premium waivers; and
- any other measure formulated in response to the COVID-19 situation as notified to the ACCC by PHA

(the **Proposed Conduct**).

8. PHA proposes that interim and final authorisation be granted subject to the condition that PHA undertakes, on behalf of the Participating Parties, to notify the ACCC of any measures formulated by the Participating Parties before they are implemented or given effect to.
9. The Participating Parties seek to engage in the Proposed Conduct for the duration of the COVID-19 crisis and request interim authorisation for the period until the ACCC grants final authorisation and for a period of six months from the date on which final authorisation is granted.
10. PHA advises that the Participating Parties have received queries from members that indicate a level of uncertainty about Members' coverage in relation to COVID-19. PHA also advises that, under many health insurance policies, cover for general treatment is limited to face-to-face consultation. Such policies would not cover general treatment received by telephone or videoconferencing in circumstances where face-to-face consultation is not possible or desirable due to COVID-19. PHA submits that authorisation of the Proposed Conduct will assist the Participating Parties to devise a supportive, consistent and comprehensive response to the COVID-19 pandemic for the collective benefit of Members.

The authorisation process

11. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether proposed conduct results in a net public benefit.

Interim authorisation

12. The ACCC may, where it considers it appropriate, grant an interim authorisation which allows parties to engage in proposed conduct while the ACCC is considering the substantive application.
13. PHA requested urgent interim authorisation for the Proposed Conduct in light of the COVID-19 pandemic and the need for immediate steps to address Members' concerns about their private health insurance policies, cover for non-hospital treatment and affordability of premiums in the face of job loss or income reduction. PHA submitted that interim authorisation was urgently required to provide a uniform response from the private health industry as quickly as possible.

¹ The ACCC notes that consumers do not need to hold private health insurance to obtain treatment for COVID-19. Treatment can be obtained through the public health system.

Consultation

14. The ACCC did not conduct a public consultation process in respect of the request for interim authorisation in light of the urgent need for the private health insurers to commence discussions and implement relief measures in the context of the unprecedented circumstances impacting the economy and the compelling nature of the public benefits that appear likely to result from interim authorisation.
15. The ACCC has recently conducted a public consultation process on the substantive application for authorisation. Nine submissions from interested parties were received and all submissions were substantially in support of the application for authorisation, though two submissions did note some concerns about the broad scope of the Proposed Conduct. All submissions are available on the [ACCC's authorisations public register](#) and PHA will be provided with the opportunity to respond to submissions on behalf of itself and the other Participating Parties.

Granting of conditional interim authorisation

16. Interim authorisation is granted subject to the following conditions:

(1) Notification of Proposed Conduct condition

17. PHA must notify the ACCC of any measure formulated by the Participating Parties as part of the Proposed Conduct (the **Particular Conduct**), prior to implementing or otherwise giving effect to the Particular Conduct.
18. For the avoidance of doubt, this condition requires PHA to notify the ACCC of any contract, arrangement or understanding arising from the Proposed Conduct. PHA must provide notification to the ACCC as soon as practical after the Participating Parties have reached agreement on the nature of the Particular Conduct, but not less than 24 hours before the Particular Conduct is implemented, or otherwise given effect to.
19. The notification of any Particular Conduct to the ACCC must include at a minimum:
 - a description of the Particular Conduct, including:
 - identifying any aspect of the Particular Conduct on which the Participating Parties will have a common position; and
 - a description of the groups of Members and, where applicable, private health service provider/s, related to, or who may be affected by, the Particular Conduct;
 - a description of the issues arising from the COVID-19 pandemic that the Particular Conduct seeks to address and how they will be addressed through the Particular Conduct;
 - the Participating Parties that, at the time of the notification, have agreed to implement the Particular Conduct; and
 - when the Particular Conduct is intended to be implemented, or otherwise given effect to.
20. The ACCC will publish a non-confidential version of the notification on the [ACCC's authorisations public register](#).

(2) Fortnightly reporting requirements

21. Starting on the first Monday following the grant of this interim authorisation, PHA must provide a fortnightly report to the ACCC regarding any meetings, discussions, developments and decisions in relation to the Proposed Conduct, including any contracts, arrangements made or understandings entered into or given effect to (**the Fortnightly Reports**).

22. A fortnightly report must include information regarding any meeting or discussion relating to the Proposed Conduct involving the Participating Parties, including:
- the attendees at the meeting or discussion;
 - the agenda items of the meeting or discussion that are related to the Proposed Conduct;
 - any minutes of the meeting or discussion relating to the Proposed Conduct; and
 - an overview of topics discussed that relate to the Proposed Conduct.
23. A non-confidential version of the fortnightly report should be provided for publication on the [ACCC's authorisations public register](#).

(3) Provision of further information

24. PHA and any Participating Party must on request by the ACCC provide, within 2 business days (unless the ACCC allows longer in writing), any further information or documents that the ACCC reasonably considers relate to the Proposed Conduct.

(4) Pricing condition

25. Any contract, arrangement or understanding arising from the Proposed Conduct must not have the purpose of increasing, and must not directly or indirectly provide for an increase in, health insurance premiums to consumers.
26. This condition does not apply to any contract, arrangement or understanding relating to premium relief.

(5) Termination of contracts condition

27. Any contract, arrangement or understanding entered into in reliance on this interim authorisation must provide for immediate termination if the Proposed Conduct is no longer authorised by this interim authorisation or a final authorisation, and all conduct giving effect to any such contract, arrangement or understanding must cease upon termination, other than any provisions dealing with ongoing confidentiality obligations.
28. For the avoidance of doubt, Participating Parties can continue to unilaterally provide any measures that are beneficial to consumers that have been provided during the period of authorisation.

Reasons for decision

29. In granting interim authorisation, the ACCC recognises the urgency of the request for interim authorisation in light of the COVID-19 pandemic, and the importance of Participating Parties being able to quickly implement measures to broaden health insurance policies and provide financial relief measures to affected Members.
30. The ACCC notes that almost all health insurers in Australia are Participating Parties. The ACCC notes some Participating Parties are individually implementing measures to respond to the COVID-19 situation. However, the ACCC recognises that there is benefit in a significant proportion of private health insurance Members receiving certainty as soon as possible in the form of a consistent minimum standard of relief.
31. In addition, Participating Parties will need to be in a position to urgently and, at short notice, implement additional measures as the situation unfolds to both provide certainty in relation to private health insurance during the COVID-19 pandemic, and to proactively meet Members' increasing need for financial relief.
32. The ACCC also notes that the fact almost all health insurers are Participating Parties means the ACCC cannot at this time form a view as to the likely long term effects of the Proposed Conduct on the competitive dynamics in health insurance or related markets. The ACCC considers that there is a risk of competitive distortion to the extent that

contracts or arrangements negotiated between PHA and hospitals or health service providers may influence future contracts and arrangements entered into after authorisation has ceased. The ACCC has imposed the conditions described in this interim authorisation to address that risk and the risk that the effect of agreements carries beyond the authorised timeframe.

33. However, there are a number of factors that increase the likelihood of markets returning to substantially their current state once the emergency circumstances subside, or which mitigate the risk of longer-term competitive detriment arising from the Proposed Conduct. In particular:

- The Proposed Conduct is a temporary measure and is linked to responding to the COVID-19 pandemic by providing certainty about private health insurance and providing financial relief to Members.
- Participating Parties will still be able to compete on price and coverage, and individual insurers are able to offer coverage and relief measures beyond that outlined in the Proposed Conduct.
- The interim authorisation is subject to a condition requiring PHA to notify the ACCC of Particular Conduct before it is implemented. This is intended to provide transparency in relation to the conduct covered by the interim authorisation. So if major concerns are identified, the ACCC may seek changes to the measures implemented under the authorisation, and is able to revoke the authorisation altogether or substitute a new interim authorisation with a different scope of authorised conduct or different conditions of authorisation. The ACCC will place any such notifications on the public register as soon as practicable.
- All Participating Parties retain the ability to opt in or out of the Proposed Conduct.

34. The ACCC considers that there appear to be sufficient public benefits from the Proposed Conduct to warrant interim authorisation in the current unprecedented circumstances. These include:

- enabling the Participating Parties to urgently provide certainty regarding private health insurance coverage during the COVID-19 pandemic, including with respect to coverage for COVID-19 private treatment and modes of non-hospital or remote treatment. Any measure arising from the Proposed Conduct will operate as a minimum requirement for Participating Parties that decide to implement it, providing certainty of minimum terms to Members. Participating Parties may independently offer relief that extends beyond the scope of any measure arising from the Proposed Conduct;
- facilitating the Participating Parties to urgently provide financial relief to Members in relation to insurance premiums, such as postponing premium increases and giving premium waivers;
- allowing PHA to communicate on behalf of the health insurance industry to deliver clear and consistent messages to Members regarding private health insurance coverage and premium relief during the COVID-19 pandemic; and
- efficiently facilitating innovative ways to provide treatment during COVID-19 restrictions and enabling the funding of health services by health insurers such as hospital in the home and treatment provided by teleconsultation or other remote modes of treatment.

35. The ACCC notes that interim authorisation only extends to the Proposed Conduct outlined at paragraph 6. Interim authorisation does not extend to any agreement between the Participating Parties to maintain or increase the price of health insurance premiums. The ACCC has imposed the condition described at 15(3) to clarify the scope of authorisation.

36. It is important that the scope and nature of the relief measures offered under the Proposed Conduct are effectively and accurately communicated to Members, as well as to people who are not currently policy holders. The Participating Parties have stated that the Proposed Conduct will not involve requiring or encouraging Members to change products or upgrade their cover; it is intended that measures will broaden Members' existing coverage without a corresponding increase in premiums.

Reconsideration of interim authorisation

37. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

Private health insurers (Participating Parties)

1. ACA Health Benefits Fund Limited
2. ahm Health Insurance
3. Australian Unity Health Limited
4. BUPA GI Pty Ltd
5. CBHS Corporate Health Pty Ltd
6. CBHS Health Fund Limited
7. CUA Health Limited
8. Defence Health Limited
9. Emergency Services Health Pty Ltd
10. GMHBA Limited
11. GU Health
12. HBF Health Limited
13. Health Care Insurance Ltd
14. Health Partners Limited
15. HIF Pty Ltd
16. Hunter Health
17. Latrobe Health Services Limited
18. Medibank Private Limited
19. Mildura Health Fund
20. MO Health Pty Ltd
21. Navy Health Ltd
22. nib Health Funds Ltd
23. Nurses and Midwives Health Pty Ltd
24. Peoplecare Health Limited
25. Phoenix Health Fund Limited
26. Police Health Limited
27. Queensland Country Health Fund Ltd
28. Queensland Teachers' Union Health Fund Limited
29. Railway & Transport Health Fund Ltd

30. Reserve Bank Health Society Ltd
31. St. Lukes Health
32. Teachers Health Fund
33. Territory Health Fund
34. The Doctors' Health Fund Pty Ltd
35. The Hospitals Contribution Fund of Australia Ltd
36. Transport Health
37. Westfund Limited