



**Private Healthcare Australia Limited –
Application for authorisation AA1000487
Interim authorisation decision
8 April 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted conditional 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 Members Health Fund Alliance and current members of Members Health Fund Alliance and PHA (**Participating Parties**) (listed in **Annexure A**).
3. PHA has applied for authorisation to enable 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 has granted interim authorisation for the conduct described at paragraph 6 below, subject to the conditions described at paragraph 15.
5. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

6. PHA, on behalf of 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 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;

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.

- providing financial relief for Members from paying health insurance premiums such as postponement of premium increases and premium waivers; and
- any other measure formulated to respond to the COVID-19 crisis as notified to the ACCC by PHA

(the **Proposed Conduct**).

7. 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.
8. PHA seeks authorisation for the duration of the COVID-19 crisis, and for a period of six months from the date on which final authorisation is granted.
9. 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

10. 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

11. 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.
12. PHA requests urgent interim authorisation 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 submits that interim authorisation is urgently required to provide a uniform response from the private health industry as quickly as possible.

Consultation

13. The ACCC has not conducted 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 likely to result from the request for interim authorisation.
14. The ACCC will conduct a public consultation process on the substantive application for authorisation in the coming days and details on how to make a submission will be available on the [ACCC's authorisations public register](#).

Granting of conditional interim authorisation

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

(1) *Notification of proposed conduct condition*

- PHA will notify the ACCC of any measure formulated by the Participating Parties as part of the Proposed Conduct (**Particular Conduct**), prior to implementing or otherwise giving effect to that Particular Conduct.
- 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 will 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.
- The notification to the ACCC will 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;
 - a description of the groups of policyholders and, where applicable, private health service provider/s, relevant to, or who may be affected by, 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.
- The ACCC will publish a non-confidential version of the notification on the Public Register.

(2) *Pricing condition*

- 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.
- This condition does not apply to any contract, arrangement or understanding relating to premium relief.

(3) *Termination of contracts condition*

- 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.
- 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

16. 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.

17. 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 crisis. However, the ACCC recognises that there is benefit in a significant proportion of private health insurance policyholders receiving certainty as soon as possible in the form of a consistent minimum standard of relief.
18. In addition, Participating Parties will need to be in a position to urgently and, at short notice, implement additional measures as the crisis 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.
19. 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. To address this risk, the ACCC has imposed conditions described at paragraph 15(3), to try and limit the risk that the effect of agreements carries beyond the authorised timeframe.
20. 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 provides some transparency in relation to the conduct covered by the interim authorisation. If major concerns are identified, the ACCC may also 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.
21. The ACCC considers that there are likely 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 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.
22. 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.
23. The ACCC considers that it is important for the scope and nature of the relief measures that will be offered under the Proposed Conduct to be effectively and accurately communicated to policy holders, as well as to people who do not currently have a private health insurance policy. It also notes that the Applicants 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 policyholders' existing coverage without a corresponding increase in premiums.

Reconsideration of interim authorisation

24. 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