



## **ADF Response to ACCC Draft Determination (DD) Regarding Honeysuckle Health<sup>1</sup>**

***The Australian Doctors Federation (ADF) calls on the ACCC to reject the authorisation as proposed in the Draft Determination on the following grounds.***

### **Wrong forum**

1. The application involves considered analysis and assessment of the implications of the proposed conduct on the welfare of the Australian public in regards to the delivery of healthcare services, which the ACCC claims no specific expertise to evaluate. As stated at 1.41 of the DD,

***“The ACCC understands there is no specific regulatory oversight or limitation on how parties contract with each other in the medical supply chain, and any such limitation (for example, to prevent value-based contracting) would be a matter for Government, through the Commonwealth Department of Health, to determine.”<sup>2</sup>***

2. As such the ADF calls on the ACCC to refer the application to the Federal Department of Health for a public inquiry into the proposed benefits and detriments of such a significant change to Australia’s healthcare delivery system and its impact on the future confidence of the Australian public and medical profession in Private Health Insurance and private sector healthcare.
3. Furthermore, the ADF contends that in the current Covid environment and its unprecedented disruptions, the Australian public and a significant number of medical practitioners (small businesses), medical organisations (including those directly involved in the setting of medical standards), as well as numerous health/patient welfare groups are either unaware of, or do not have the resources to respond to, the DD. This is despite the fact that all Australians are potentially impacted by the conduct.

### **Risks of worse health outcomes**

4. The ACCC States at 1.42 ***“if ‘value-based contracting’ leads to reduced practitioner or procedure choice or worse health outcomes, consumers have the ability to move and HH participants will lose members to other insurers.”<sup>3</sup>*** [Bolding added]
5. The ACCC has not had the benefit of any formal patient safety impact evaluation in regard to the short-, medium- and long-term implications of the application on patients’ health and has itself acknowledged that the proposed conduct could lead to “worse health outcomes”.

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<sup>1</sup> [Draft Determination - 21.05.21 - PR - AA1000542 - Honeysuckle Health and nib.pdf \(acc.gov.au\)](#)

<sup>2</sup> [Draft Determination - 21.05.21 - PR - AA1000542 - Honeysuckle Health and nib.pdf \(acc.gov.au\)](#), Pg 8, 1.41

<sup>3</sup> [Draft Determination - 21.05.21 - PR - AA1000542 - Honeysuckle Health and nib.pdf \(acc.gov.au\)](#), Pg 8, 1.42

6. The ACCC is correct in its identification of this possibility given that no one has seen or approved a copy of the proposed unregulated “value-based contract”, which the applicants intend to implement.
7. However, in order for the ACCC to fulfil its purpose, namely **“protecting the interests and safety of consumers, and supporting fair trading in markets affecting consumers and small business”**,<sup>4</sup> the ADF submits that the ACCC should not authorise any proposed conduct until a thorough independent public evaluation of potential health detriments has been conducted with wider consultation.
8. The ADF also maintains that it is in the public interest for the ACCC to consider the behaviour of any of the applicants in relation to consumer behaviour in any jurisdiction, both in Australia and overseas, as to assessing potential adverse impacts on Australians. Given the unregulated nature of the proposed conduct and the unprecedented implementation of “value-based contracts”, it is essential that the ACCC consider the results on consumers and patients, particularly those with chronic health conditions, that are likely to arise from considerations of value **“from the healthcare payer’s perspective”** according to the DD at 1.30<sup>5</sup>
9. Such practices in the US have been described by former Cigna PR Executive Wendell Potter as follows: *“To help meet Wall Street’s relentless profit expectations, the for-profit insurers that now dominate the industry routinely dump policyholders who are less profitable or who get sick. Insurers use several techniques to cull the sick from their rolls. One is policy rescission, the common but until recently largely unknown practice in the insurance industry of retroactively cancelling policyholders with large medical bills.”*<sup>6</sup>
10. Although all such claims by former industry insiders must be subject to careful evaluation, the repeated intervention by US Government agencies into similar practices indicates clearly what is possible once the principle of community rating is sufficiently undermined and substituted with risk rating, which the ADF contends is the ultimate result of the proposed conduct.

#### **National cybersecurity interest not assessed**

11. Cigna is a multi-national corporation operating in the health industry, with substantial capacity in health data and health analytics. The proposed conduct involves using this expertise as noted in the DD at 4.50.

***“However, the ACCC also notes the Applicants’ submissions that HH is a health data science company with significant capability in data science, analytics and forecasting, and the HH Buying Group will have access to sophisticated data analytics, which the Applicants consider are superior to existing offerings. The Applicants state that HH’s data analytics undertaken as part of its Contracting Services will use claims and Hospital Casemix Protocol data of all Participants.”***<sup>7</sup>

12. The ADF contends that **all data related to medical practice is patient related**. Given that patient related data is the subject of cybersecurity concerns, both in Australia and overseas, the ADF urges the ACCC to reassess the potential public detriments and national interest concerns resulting from the proposed conduct.
13. In assessing the claimed public benefits of enhanced information technology and data analytics as supplied by the joint venture partner Cigna, the ADF can find no evaluation or disclosure of what level of

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<sup>4</sup> [About the ACCC | ACCC](#)

<sup>5</sup> [Draft Determination - 21.05.21 - PR - AA1000542 - Honeysuckle Health and nib.pdf \(acc.gov.au\)](#), Pg 6, 1.30

<sup>6</sup> Deadly Spin: An Insurance Company Insider Speaks Out on How Corporate PR Is Killing Health Care and Deceiving Americans by Wendell Potter, Kindle version Chapter 4 Remote Area Medical in Wise County Virginia, Location 1103 of 4159

<sup>7</sup> [Draft Determination - 21.05.21 - PR - AA1000542 - Honeysuckle Health and nib.pdf \(acc.gov.au\)](#), Pg 16, 4.50

private patient information or general health information will be gathered by the applicants under **yet to be determined unregulated contracts**. Furthermore, it is unclear what information the applicants will be entitled to under Australian law, including access to My Health Records.

14. According to Cigna's website, *"Cigna is a global health services company dedicated to improving the health, well-being, and peace of mind of those we serve. With more than 180 million customer and patient relationships in more than 30 countries and jurisdictions, we are able to harness actionable insights that address whole-person health and drive better health outcomes."*
15. **Cigna states that it operates in Asia/Pacific, Europe, the Middle East and the Americas and provides specialised insurance to IGOs (Inter-governmental Organisations) and NGOs (Non-Governmental Organisations).**<sup>8</sup>
16. The ADF notes that previous data leaks from health funds in Australia give no comfort or confidence that the myriad of current complex privacy and data protection regulation provides any real and effective protection of the Australian public, particularly in light of recent ransomware attacks on health data in the US.
17. The ADF asserts that the ACCC has not evaluated and cannot predict how and where the applicant's ability to collect data for its proposed conduct will be used, including third party use, and requests the ACCC to refrain from authorising the proposed conduct until such times as an independent assessment of the **cybersecurity risks to the Australian public**, Australian medical practitioners and other health professionals has been undertaken.

#### **Take it or leave it**

18. The ACCC concludes that *"The Applicants have not sought authorisation for the HH Buying Group to engage in the collective boycott of any services of a Provider. **This means that no Provider would be obliged to deal with the HH Buying Group and the HH Buying Group would not be permitted to boycott any Providers that refuse to deal with the group.**"*<sup>9</sup>
19. The ADF maintains that the above ACCC conclusion offers no protection for those medical practitioners (small businesses in ACCC terms) who do not wish to participate in "value-based contracts" and falls short of the ACCC's remit of **"supporting fair trading in markets affecting consumers and small business"**. It is clear that the applicants plan to represent third party funders including health funds in a major campaign to sign doctors into unregulated and as yet unseen "value-based contracts". **There is nothing to stop health funds altering existing rules of no gap and known gap products in order to drive medical practitioners into proposed contract arrangements by making it extremely difficult, to the point of non-viability, not to participate on take it or leave it conditions.**
20. The ADF is well aware of these tactics, as is the Australian Dental Association (ADA), which in its submission to the ACCC on this matter stated, *"For example, BUPA recently wrote to all dentists in Australia (and possibly all primary health care providers) indicating that the mere provision of a service to a person who had purchased a BUPA insurance product is an acceptance of contract terms determined by BUPA. BUPA explicitly stated that if those terms are not accepted, a practitioner is to notify BUPA and that practice will be 'de-recognised', upon which BUPA will not pay any claim by the patient under the patient's policy for treatment by that provider."*<sup>10</sup>

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<sup>8</sup> [Cigna Websites | Cigna Europe \(cignaglobal.com\)](#)

<sup>9</sup> [Draft Determination - 21.05.21 - PR - AA1000542 - Honeysuckle Health and nib.pdf \(acc.gov.au\)](#), Pg 1

<sup>10</sup> [ADA-response-to-ACCC.aspx](#)

## Conclusion

21. The ADF requests that the ACCC reject the proposed conduct in its entirety and only reconsider any future application after a full transparent public inquiry and appropriate regulation of the proposed conduct has been undertaken (i.e. to act decisively to protect Australian consumers).



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