21 October 2021

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Mr David Hatfield
Director
Competition Exemptions
Via email: adjudication@accc.gov.au

Dear Mr Hatfield

Re: Applications for reauthorisation – Private Healthcare COVID-19 arrangements, draft determination and interim authorisation consultations

I am responding to your request for submissions in relation the above matter. The AMA believes that before final authorisation is given, the ACCC should examine the applications more thoroughly and seek detailed material from the applicants about their plans to increase available public hospital capacity and to ensure that private patients can continue to access services in the private sector.

COVID-19 has presented significant challenges for the Australian health system, with the potential for the pandemic to overwhelm available resources. The collaboration between jurisdictions and private providers to support our public hospital system has been an essential part of an effective health response. The previous authorisation provided by the ACCC supported this collaboration and it was entirely appropriate for the ACCC approval process to be expedited without the usual level of evidence required by the ACCC.

We are now shifting into a different phase of the pandemic, with rapidly growing rates of vaccination and the commitment of governments to open up over coming months. This means that there will be more pressure on our public hospital system from community transmission while, at the same time, public hospitals will need to clear a significant backlog of delayed cases as well as meet the usual acute care needs of the community. Recognising that public hospitals were already under significant pressure prior to the pandemic, this will require jurisdictions to build public hospital capacity and this will need careful planning and extra resourcing.

However, eighteen months into this pandemic, the evidence is that jurisdictions have only just turned their attention to this. There is a legitimate concern that, rather than building overall system capacity, public hospitals will continue to be starved of resources and forced to shift a significant part of their workload into the private sector. This behaviour is potentially incentivised under the *National Partnership on COVID-19 Response*, with the Commonwealth responsible for funding 50% of the costs (uncapped) of treating a public patient in a private hospital under this agreement.

While it has been entirely appropriate for arrangements to operate that support public hospitals to tap into the resources of the private sector to ensure patients can access care during the pandemic, this has not been without some public detriment. Our doctor in training members working in the public sector advise that, where this has happened, it typically involves the transfer of less complex procedures and

results in the loss of access to important training opportunities. While Colleges have made adjustments to ensure that this does not unfairly impact on assessments, this is not sustainable in the longer term.

As foreseen by the ACCC, private patients have also been displaced and this has had flow on effects for specialists working in private practice. Combined with the impact of elective surgery restrictions, at times this has left them with little or no procedural work, with some specialties like orthopaedics impacted more than others. Some private hospital operators have also taken advantage of this situation and offered contracts for the treatment of public patients that are manifestly inadequate.

Despite these adverse impacts, the profession has supported these arrangements, recognising the importance of providing surge capacity where it is genuinely required. However, if the transfer of public patients to the private sector becomes routine because authorised jurisdictions fail to fund additional capacity in their own hospitals and instead use the private sector to meet day to day public hospital demand, then the public detriment and impact on competition will become far more pervasive than contemplated by the ACCC in its interim decision.

This approach would significantly distort the market and fundamentally impact on the traditional role of public hospitals in teaching and training the next generation of medical students and doctors. It would translate to the displacement of private patients, growing private elective surgery backlogs, the diminished value proposition of private health insurance while also having a potential impact on the viability of some private medical practices.

Australia's mix of public and private health care delivery works well and each sector complements the other. The ACCC should assure itself that the jurisdictions that have applied for re-authorisation are committed to building overall system capacity, otherwise this delicate balance will be upset to the detriment of the overall performance of the health system.

To the extent that this authorisation is needed, we would encourage the ACCC to consider the inclusion of conditions to ensure it is focused on supporting surge capacity in times of genuine need while also requiring the applicants to provide regular reports on demand for public hospital services, available capacity and what they are doing to satisfy unmet need within their own hospitals.

Yours sincerely

Dr Omar Khorshid
President