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## Health Insurance (prudential standard) determination No. 6 of 2015

### Prudential Standard HPS 350 Disclosure to APRA

#### *Private Health Insurance (Prudential Supervision) Act 2015*

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I, [insert name of delegate], delegate of APRA under subsection 91(1) of the *Private Health Insurance (Prudential Supervision) Act 2015* (the Act) DETERMINE *Prudential Standard HPS 350 Disclosure to APRA* in the form set out in the Schedule, to the extent that it applies to all private health insurers.

This instrument commences on 1 July 2015.

Dated: xx June 2015

[To be signed]

#### **Interpretation**

In this Determination:

**APRA** means the Australian Prudential Regulation Authority.

**Private health insurer** has the meaning given in the section 4 of the Act.

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## **Schedule**

*Prudential Standard HPS 350 Disclosure to APRA* comprises the 6 pages commencing on the following page.



## **Prudential Standard HPS 350 Disclosure to APRA**

### **Objectives and key requirements of this Prudential Standard**

This Prudential Standard sets out minimum requirements for circumstances where a private health insurer must make disclosures to APRA.

The key requirements of this Prudential Standard for private health insurers are that private health insurers must:

- give copies of certain forms lodged with ASIC to APRA;
- give copies of notice of meetings of members to APRA;
- notify APRA of a resolution to remove a director;
- notify APRA of the termination of a person's complying health insurance policy;
- notify APRA of any investigation of the insurer or officer of the insurer; and
- notify APRA of unusual incidents or circumstances.

## Authority

1. This Prudential Standard is made under paragraph 91(1) of the *Private Health Insurance (Prudential Supervision) Act 2015* (the Act).

## Application

2. This Prudential Standard applies to all **private health insurers**<sup>1</sup>, except where expressly noted otherwise.
3. All private health insurers have to comply with this Prudential Standard in its entirety, unless otherwise expressly indicated.
4. This Prudential Standard applies to private health insurers from 1 July 2015.

## Interpretation

5. Terms that are defined in *Prudential Standard HPS 001 Definitions* appear in bold the first time they are used in this Prudential Standard.
6. Where this Prudential Standard provides for APRA to exercise a power or discretion, the power or discretion is to be exercised in writing.
7. Unless otherwise indicated, the term **health benefits fund** will be used to refer to a health benefits fund of a private health insurer, as relevant.

## Insurers must give copies of certain forms lodged with ASIC to APRA

8. If a private health insurer lodges with ASIC any of the following forms, the insurer must, at the same time, give a copy of the lodged form to APRA:
  - (a) Form 205 – Notification of resolution;
  - (b) Form 315 – Notification of resignation, removal or cessation of auditor;
  - (c) Form 388 – Copy of financial statements and reports;
  - (d) Form 484 – Change to company details; and
  - (e) Form 2501 – Application for extension of time to hold Annual General Meeting.
9. A reference in paragraph 8 to a lodged form includes a reference to any other material required by the Corporations legislation to be lodged with the form.
10. In paragraph 8, a reference to a form followed by a number is a reference to:
  - (a) if a form of that number is prescribed in the *Corporations Regulations 2001* for a provision of the *Corporations Act 2001* or a provision of those Regulations – the form so numbered in those Regulations; and

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<sup>1</sup> Refer to subsection 91(1) of the Act.

- (b) if a form of that number is not prescribed in those Regulations – the form of that number that is approved by ASIC.

Note: Forms approved by ASIC under paragraph 350(1)(b) of the *Corporations Act 2001* are available on the ASIC website at <http://www.asic.gov.au>

### **Insurers to give copies of notice of meetings of members to APRA**

- 11. A private health insurer must give to APRA:
  - (a) written notice of a meeting of the members of the insurer in the same way that a member of the insurer is entitled to receive notice of a meeting under section 249J of the *Corporations Act 2001*; and
  - (b) any other communications relating to the meeting that a member of the insurer is entitled to receive under that Act.
- 12. The private health insurer must give to APRA the information mentioned in paragraph 11 in accordance with:
  - (a) if the insurer is a listed **company**—the notice requirements mentioned in section 249HA of the *Corporations Act 2001*; and
  - (b) if the insurer is not a listed company—the longer of:
    - (i) the notice requirements mentioned in section 249H of the *Corporations Act 2001*; and
    - (ii) the period for giving notice specified in the insurer’s constitution.

### **Insurers to notify APRA of resolution to remove director**

- 13. A private health insurer must notify APRA, in writing, if:
  - (a) the insurer by resolution removes a director from office; or
  - (b) for an insurer that is not a public company—the directors of the insurer by resolution remove a director from office.
- 14. The insurer must notify APRA within 14 days after the day the resolution is passed.

### **Insurers to notify APRA of termination of person’s complying health insurance policy**

- 15. A private health insurer must notify APRA, in writing, if:
  - (a) a decision is made to terminate a person’s complying health insurance policy with the insurer; and

- (b) the termination:
  - (i) does not relate to the person's payment of premiums under the policy; and
  - (ii) is not a result of a request by the person to cancel the policy.
- 16. The notification must:
  - (a) be made within 14 days after the end of the month in which the termination occurred; and
  - (b) include only the following information:
    - (i) the number of terminations in the month; and
    - (ii) the reason for each termination.

### **Insurers to notify APRA of investigation of insurer or officer of insurer**

- 17. A private health insurer must notify APRA, in writing, if:
  - (a) the insurer, or an officer of the insurer, is under investigation or subject to criminal or civil proceedings in relation to an alleged or suspected contravention of:
    - (i) the Act or the *Private Health Insurance Act 2007* (PHI Act);
    - (ii) the Corporations legislation, or any law of a foreign country that corresponds to the Corporations legislation;
    - (iii) the *Trade Practices Act 1974*; or
    - (iv) a law in force in Australia, or the law of a foreign country, if the offence concerns dishonest conduct or conduct relating to a financial sector company (within the meaning of the *Financial Sector (Shareholdings) Act 1998*);
  - (b) the insurer, or an officer of the insurer, is under investigation or subject to disciplinary action, by a regulatory authority or other body established by or under a law of the Commonwealth or of a State or Territory, for conduct that is reasonably likely to affect the operations of the insurer; or
  - (c) the insurer gives a written undertaking to the Australian Competition and Consumer Commission for section 87B of the *Trade Practices Act 1974*.
- 18. The insurer must give to APRA details of a matter mentioned in paragraph 17 within 14 days after the insurer becomes aware of the matter.
- 19. The insurer must report the outcome of the matter to APRA within 14 days after the day the insurer is notified of the outcome of the matter.

20. This section does not apply to:
- (a) a preliminary inquiry for the purpose of deciding:
    - (i) how to deal with a complaint relating to a private health insurer or an officer of a private health insurer; or
    - (ii) whether to conduct an investigation in relation to a private health insurer or an officer of a private health insurer;
  - (b) a request under section 96-15 of the PHI Act by the Secretary of the Department or the Private Health Insurance Ombudsman for a private health insurer to give specified information about a **complying health insurance product** or products, or a complying health insurance policy, of the insurer;
  - (c) a request under subsection 191-1(1) of the PHI Act by the Minister for a private health insurer to explain its operations;
  - (d) an investigation by the Minister of the operations of a private health insurer under Division 194 of the PHI Act;
  - (e) the exercise of search powers by an authorised officer in accordance with Division 313 of the PHI Act; or
  - (f) an investigation by the Private Health Insurance Ombudsman.

Note: APRA must comply with the Information Privacy Principles — see section 16 of the *Privacy Act 1988*. For the limits on disclosure of personal information, see Principle 11 in section 14 of that Act.

### **Insurer must notify APRA of unusual incidents or circumstances**

21. A private health insurer must notify APRA, in writing or by telephone, as soon as practicable after an unusual incident or circumstance occurs that affects prudential matters relating to the insurer.

Note: For the meaning of prudential matters, see subsection 91(2) of the Act.

22. For paragraph 21, an unusual incident or circumstance includes, but is not limited to, any of the following:
- (a) fire, flood or other damage to infrastructure resulting in a substantial loss of operational capacity of the insurer for more than 24 hours;
  - (b) total or partial loss of information and communications technology infrastructure for more than 72 hours;
  - (c) an accident that:
    - (i) causes the death of, or serious personal injury to, a substantial proportion of the officers of the insurer;

- (ii) causes a substantial proportion of the officers of the insurer to be incapacitated from performing work; or
- (d) biohazard, bomb threat, lockdown or other event that results in a substantial loss of operational capacity of the insurer for more than 24 hours.

### **Transition arrangements**

23. Any approval, determination or other exercise of discretion by PHIAC under Schedule 3 – Disclosure Standard of the *Private Health Insurance (Insurer Obligations) Rules 2009* as they existed prior to 1 July 2015 will continue to have effect following 1 July 2015 as though exercised pursuant to a corresponding power under this Prudential Standard.

### **Exemptions and modifications by APRA**

24. APRA may, on written application by a private health insurer or on its own initiative, in writing:
- (a) exempt the insurer from all or specified provisions of this Prudential Standard; or
  - (b) modify the application of specified provisions of this Prudential Standard in relation to the insurer.