

19 May 2015

Mr Pat Brennan
General Manager, Policy Development
Policy, Statistics and International
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

Dear Mr Brennan,

Thank you for the opportunity to provide feedback on the proposed prudential and reporting framework for Australian Prudential Regulation Authority (APRA) supervision of private health insurers in Australia.

Medibank welcomes APRA's stated goal of providing a seamless transition from Private Health Insurance Administration Council (PHIAC) to APRA administration. We note and support the guiding principle that, at the time of transfer of private health insurance industry prudential supervision responsibility from PHIAC to APRA, there should be no substantive changes to the prudential standards, rules or reporting arrangements already in place.

We also welcome APRA's commitment to consult with the private health insurance industry over any future changes to prudential standards, rules or reporting arrangements. Noting PHIAC has recently completed a review of some key aspects of prudential supervision we recommend APRA take a careful and deliberate approach towards any future change. In making this recommendation we observe the strong record of prudential safety that characterises the private health insurance industry in Australia and urge this record be taken into account in formulating policy.

Data confidentiality

The key outstanding issue to be resolved is the question over the confidentiality of data presently collected under PHIAC 1 and redistributed to funds via the quarterly PHIAC B and RETF reports. Consistent with the principle that there are no substantive changes to reporting arrangements already in place, we note APRA's position that it should continue to distribute fund level data as is presently done.

We are aware that distributing such data is a departure from usual APRA practices and as such requires a deliberate decision on how this distribution should be managed. We support the use of the exemption permitted by section 56 (4) (b) of the APRA Act 1998, which allows disclosure, provided the party who owns the information has consented. To facilitate this, Medibank consents to its data being included in the PHIAC B and RETF reports, although reserves the right to withdraw this consent at any time.

Medibank does not support data collected under *Reporting Standard HRS 601* being declared as non-confidential under section 57 of the APRA Act 1998. Making such information publically available, even on an on-application or FOI basis, would be a substantive change from existing practice and thus a clear deviation from the principle that there should be no substantive changes to the reporting arrangements already in place.

Medibank does not consent to having data provided by it declared as non-confidential.

Administrative Appeals Tribunal review

Medibank notes the proposed standards remove private health insurers' powers to seek Administrative Appeals Tribunal review of certain APRA decisions. In keeping with the principle there should be no substantive changes to arrangements already in place we suggest these powers are reinstated. Listed below are some examples of areas where this power should be reinstated but there may be others.

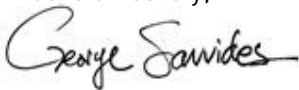
- The Solvency Standard. Currently, the Private Health Insurance (Health Benefits Fund Administration) Rules 2007, Schedule 2 (Solvency Standard), subsections 6(3) and (4), says that an insurer has a right to apply to the AAT for review of a decision by PHIAC that results in PHIAC determining that there should be a "solvency supervisory adjustment amount" in respect of an insurer's health benefits fund. There is no review right under Health Insurance (prudential standard) determination No. 2 of 2015 (*HPS 100 Solvency Standard*), paragraph 19.
- There's a similar 'missing' review reference in the Capital Adequacy Standard. Compare paragraph 30 of the proposed *HPS 110 Capital Adequacy* with subsections 12(4) and (5) of the current Standard (Private Health Insurance (Health Benefits Fund Administration) Rules 2007, Schedule 3 (Capital Adequacy Standard)).
- If a candidate for the post of appointed actuary doesn't meet the requirements of being ordinarily resident in Australia, a Fellow of the Institute of Actuaries of Australia and a Fellow of at least 5 years' standing, APRA nevertheless has power to approve her or his appointment. Under current standards contained within section 3 of Schedule 2 of the Appointed Actuaries Standard a decision by APRA not to do so is a reviewable one. Under the proposed new arrangements in *HPS 320 Actuarial and Related Matters* rule 12 it is not.

Drafting concerns

Medibank's review of the draft prudential standards and rules has detected a number of drafting issues that should be addressed. This feedback is contained in the attachment overleaf. For most standards and rules we have separated the issues into a primary group requiring immediate attention and a secondary group for subsequent consideration.

Should you require further information regarding this matter please do not hesitate to contact me or my team.

Yours sincerely,



George Savvides
Managing Director

Attachment - drafting issues

Medibank's review of the draft prudential standards and rules detected a number of issues to be addressed. This feedback is contained below. For each standard and rule we have listed issues that require immediate attention and must be addressed before the rules become effective and a secondary group that can be addressed in the fullness of time.

Health Insurance (prudential standard) determination No. 2 of 2015 – Prudential Standard HPS 100 Solvency Standard	
Provisions requiring immediate attention	
Paragraph 12	This refers to the “solvency requirements set out in this section”. What is “this section”? Should it be a reference to paragraphs 9 to 14?

Health Insurance (prudential standard) determination No. 3 of 2015 — Prudential Standard HPS 110 Capital Adequacy	
Provisions requiring immediate attention	
Subparagraph 26(a)	What is the meaning of “health business revenue”? Private health insurers typically conduct health insurance business and health-related business . The term “health business” does not seem to be defined.
Subparagraph 27(d)	This refers to “calculating the solvency supervisory adjustment amount”, whereas the current standard refers to calculating the capital adequacy supervisory adjustment amount. It seems unlikely that this is a deliberate change intended to correct a mistake in the current standard.
Provisions otherwise requiring consideration	
Subparagraph 14(c) Subparagraph 25(c)	The term “health related business” is employed. The term as used in the current legislation and the proposed legislation is health-related business (note the hyphen).
Subparagraph 19(b), definition of the term T	The “and” following sub-subparagraph (iii) probably belongs at the end of sub-subparagraph (ii). This appears to be a mistake in the current capital adequacy standard too.

Health Insurance (prudential standard) determination No. 4 of 2015 – Prudential Standard HPS 231 Outsourcing	
Provisions requiring immediate attention	
Paragraph 20.	<p>Paragraph 20 says that an outsourcing arrangement must include a requirement that the outsourced service provider allow APRA access to documentation and information related to the outsourcing arrangement with the private health insurer.</p> <p>If a private health insurer entered into an outsourcing arrangement - or amended or varied one - on or after 1 October 2012, then it will have arranged for the equivalent requirement under the current regime to be satisfied. The documentation of such an arrangement would therefore mention PHIAC, not APRA.</p> <p>Insurers will immediately be in breach of this requirement on commencement of the proposed APRA Rules unless legislation effecting the transition of responsibility from PHIAC to APRA specifies that APRA is the successor-in-law to any rights that PHIAC may have had or unless insurers can persuade relevant other parties to agree to amend those references. There is no certainty that an insurer would be able to obtain agreement to that proposal, and it is unnecessarily burdensome to require insurers to seek such changes.</p> <p>In the absence of the legislative cure to this problem suggested above, Medibank recommends varying the proposed APRA Rule relating to outsourcing so that paragraph 20 reads as follows:</p> <p style="padding-left: 40px;">20. An outsourcing arrangement must include a requirement that the outsourced service provider allow APRA access to documentation and information related to the outsourcing arrangement with the private health insurer. <u>If an outsourcing arrangement is in place at the time that this Prudential Standard commences and it is not an outsourcing arrangement to which paragraph 32 applies, then if that outsourcing arrangement already makes such a requirement of the outsourced service provider but in relation to the Private Health Insurance Administration Council, then the outsourcing arrangement is taken to satisfy the requirement of this paragraph 20, but only until the outsourcing arrangement is renewed or renegotiated, at which time any reference to the Private Health Insurance Administration Council must be updated so as to become a reference to APRA.</u></p>
Paragraph 23	<p>Medibank notes the correspondence of paragraph 23 of the proposed Prudential Standard to s.4(4) of the existing standard but considers that this is likely to be <i>ultra vires</i> and legally ineffective. If APRA has not taken specific advice on the legal effectiveness of such a provision previously, then Medibank</p>

	<p>recommends that it do so. And in any case, supporting explanatory materials for the proposed APRA Rules should detail the basis upon which such a provision is considered to be within APRA's power and to be legally effective.</p> <p>As an alternative to proposed paragraph 23 in this form, APRA may wish to contemplate obliging insurers to take all reasonable steps to procure that an outsourced service provider should comply with such an obligation. The word 'reasonable' here is essential because an insurer should not be required to initiate legal action for specific performance of the outsourced service provider's obligation in the absence of APRA providing a full costs indemnity to the insurer in relation to such action.</p>
<p>General comment / Paragraph 13</p>	<p>Medibank is of the view that the proposed Prudential Standard is too broadly expressed - and that this is a problem with the current standard also.</p> <p>A company must be registered as a private health insurer in order to undertake health insurance business. A reference to a private health insurer then becomes a reference to the <i>legal entity</i> that is the company. Since 1 April 2007, a private health insurer has not been prevented from undertaking business activities other than private health insurance, which business activities are conducted outside its health benefits fund. Such business activities may be entirely outside the ordinary remit of a body such as APRA.</p> <p>The proposed Prudential Standard is expressed to apply to private health insurers - i.e., to the legal entities - in respect of those legal entities' outsourcing of material business activities, and despite the term 'health benefits fund' being defined in paragraph 7, the definitions and therefore ambit of the Prudential Standard is not limited to the outsourcing of those legal entities' business operations <i>that are part of the entities' health benefits funds</i>, but rather they extend to all outsourcing of material business activities of the broader 'business operations' of those legal entities.</p> <p>Division 137 of the <i>Private Health Insurance Act 2007</i> should give adequate protection to insurers' health benefits funds from the effects of their business that is conducted outside those health benefits funds.</p> <p>The proposed Prudential Standard should be revised so that it applies in respect only of outsourcing of activities that are material business activities by reason of disruption to such activities having the potential to affect, in a significant and adverse manner, the private health insurer's health benefits fund or any business that it conducts within its health benefits fund. Appropriate amendments could therefore be made in paragraph 13 of the proposed Prudential Standard.</p>

Provisions otherwise requiring consideration	
Statement of Objectives and key requirements of this Prudential Standard	Last dot point: error of syntax in “must make meet”.

Health Insurance (prudential standard) determination No. 5 of 2015 – Prudential Standard HPS 320 Actuarial and Related Matters	
Provisions requiring immediate attention	
	No comments in this category
Provisions otherwise requiring consideration	
Paragraph 14, Note	Delete “of” in the opening expression, “Subsection of 107(1) of the Act”.
Paragraph 26	This refers to “the fund’s operations”. The term “fund” is not itself defined and this is not an obviously shortened subsequent reference to a use of “health benefits fund” in the same paragraph or even the same part of the standard. Consider amending it to use the term “health benefits fund”.

Health Insurance (prudential standard) determination no. 6 of 2015 – Prudential Standard HPS 350 Disclosure to APRA	
Provisions requiring immediate attention	
Sub-subparagraph 17(a)(i)	Remove the opening words "the Act or". Regulatory action under "the Act" — i.e., the 'PHIPS' Act ¹ — will be taken by APRA, so there is no need for the insurer to make disclosure of such action by APRA to APRA. This is reinforced by paragraph 19: there should be no obligation on an insurer to advise APRA what is the outcome of a matter that APRA has initiated and pursued.
Sub-subparagraph 17(a)(iii) Subparagraph 17(c)	Update reference from <i>Trade Practices Act 1974</i> to <i>Competition and Consumer Act 2010</i> .
Provisions otherwise requiring consideration	
Various typographical and similar errors	Paragraph 1: change "paragraph 91(1)" to "subsection 91(1)". Subparagraph 10(a): the names of Regulations should not be italicised.

¹ 'PHIPS' Act means the Act that will exist if the Private Health Insurance (Prudential Supervision) Bill is passed.

Health Insurance (prudential standard) determination No. 7 of 2015 – Prudential Standard HPS 510 Governance	
Provisions requiring immediate attention	
Paragraph 17	The cross-reference that appears in paragraph 17 is to the immediately preceding paragraph, paragraph 16. If the new standard is intended to replicate the current standard, then that cross-reference should actually be to <i>paragraph 15</i> .
Paragraphs 20 and 21	Paragraphs 20 and 21 use the terms "Australian owned" and "foreign owned". Where are these terms defined? We acknowledge a similar issue with section 3 of the current standard.
Paragraph 46	Paragraph 46 uses the term "regulated institution" - twice. This should be changed to "private health insurer" in each instance.
Provisions otherwise requiring consideration	
Paragraph 10.	<p>We note that in circumstances such as resignation or death, an insurer may find itself in breach of provisions such as paragraph 10. We note that this is an existing problem with corresponding provisions of the governance standard that currently applies to private health insurers.</p> <p>We suggest that APRA publish via its 'standard operating procedures' what its attitude is to events causing such technical breaches and what its requirements are for insurers in relation to rectification of those types of technical breaches.</p>
Various typographical and similar errors	<ul style="list-style-type: none"> • Page HPS 510 - 1: "for are"; • Paragraph 17: "who does not meet paragraph ..." should be "who does not meet <u>the requirements of paragraph...</u>", notwithstanding similar poor expression in subsection 2(3) of the current standard; • Paragraphs 20 and 21: the compound adjectives "Australian owned" and "foreign owned" should be hyphenated; • Paragraph 32: insert either "include" or "are" after "individual directors" in the first line.

Private Health Insurance (Prudential Supervision) Rules 2015	
Provisions requiring immediate attention	
Paragraph 11(3)(h)	This is an issue with the current Rules also. The two requirements expressed in subparagraphs 11(3)(h)(i) and (ii) do not have any grammatical relation to what has preceded them.
Paragraph 12(1)(b)	The term 'transfer date' is used in rule 12 - see, for example, paragraph 12(1)(b); however, it has not been defined there and the definition in paragraph 11(3)(c) likely applies only to rule 11 (if not in an even more restricted fashion to subrule 11(3)).
Schedule 1, item 1	The introductory line of text should probably refer to subrule 11(3).
Schedule 1, item 2(f)	"Transferee" is not a defined term.
Schedule 1, item 2(g)	The reference to "fund assets" should be a reference to "assets of a health benefits fund".
Provisions otherwise requiring consideration	
Rule 3	"Assets" should not have an initial capital.
subrules 6(2) and paragraphs 6(2)(a), (b), (c), etc.	Recurrent formatting issues in relation to what are presumably meant to be defined terms. Compare paragraph 7(1)(a) for the use of bold and italicised font in order to give effect to an implied definition with the use of parentheses.
Various typographical and similar errors	There is an extra semicolon at the end of sub-subparagraph 12(1)(b)(ii)(A).
Rule 16	We query the different formulations in rule 16 - which refers to "the *approved form" and paragraph 16A(b) which refers to "a form approved by APRA".

Private Health Insurance (Registration) Rules 2015	
Provisions requiring immediate attention	
Rule 4	Rule 4 requires substantial revision. Paragraphs (a) to (e) do not describe features that are "in relation to the health benefits fund, or each of the health benefits funds" that an applicant proposes to conduct. Rule 4 should therefore be broken down into two divisions where only the criteria specified in paragraphs (f) and (g) are required to be included in the application "in relation to the health benefits fund, or each of the health benefits funds" that the applicant proposes to conduct, and where the requirements of paragraphs (a) to (e) are stated without any such reference.
Paragraph 4(a)	In the current paragraph 4(a), should the reference to "the Act or the <i>Financial Sector ... Act 2001</i> " use "and" instead of "or"?
Paragraph 4(g)	Paragraph 4(g): "APRA can be satisfied that the application includes ... and the proposed premiums". The "proposed premiums" <i>for what?</i> Should this be a reference to the premiums that the insurer proposes to charge for each of the private health insurance products - or perhaps just for the complying health insurance products? - that it means to offer, broken down for each product subgroup?
Provisions otherwise requiring consideration	
Rule 3	There should be no initial capitals in the references to "Chief executive officer", "Complying health insurance policy", and "Health insurance business".
Footnote 1 Footnote 2	Footnotes 1 and 2 each reference a single <i>criterion</i> – so do not use "criteria" which is a plural form.
Asterisked terms	Reversion to this style of indicating that a term is a defined term seems odd given that it is not a feature used elsewhere in the proposed package of regulatory instruments.
Paragraph 6(b)	Rather than prohibiting a restricted access insurer from adding "new persons" to a restricted access group, shouldn't this be a prohibition upon adding new <i>classes</i> of person to the group? If not, it actually reads as though it is a prohibition upon issuing any new policies.

Private Health Insurance (Risk Equalisation Administration) Rules 2015	
Provisions requiring immediate attention	
Subrule 3(1)	<ul style="list-style-type: none"> a. 'Act' should be defined to mean the 'PHIPS' Act. b. 'Business Rules' should reference the PHI Act, not "the Act". c. 'PHIAC' would be better defined by reference to subsection 264-1(1) of the PHI Act (as in force immediately prior to the 'PHIPS' Act commencing). Please also note that this is an issue for the definitions of 'PHIAC' in each of the draft Reporting Standards HRS 601.0 to 604.0. d. 'Risk Equalisation Policy Rules' should reference the PHI Act, not "the Act".
Provisions otherwise requiring consideration	
Rule 3	No initial capital should appear in "Cover" or (in subrule (1)) "Adult" and "Quarterly return".

Private Health Insurance (Health Benefits Fund Enforcement) Rules 2015	
Provisions requiring immediate attention	
Subparagraph 8(a)(ii)	Are the references in this paragraph correct? Should it instead refer to "a different deed of arrangement from that [originally] proposed by the external manager"?
Rule 23	The reference "omit 437C or 440C" should be "omit 437C or 440B".
Rule 57	The substituted subsection 450A(2) should reference the PHIPS Act, not the PHI Act.
Provisions otherwise requiring consideration	
Subrule 6(2)	This references "the APRA".
Subrule 7(7)	Given that creditors may attend meetings and all policyholders are creditors, doesn't the reference to all persons entitled to attend agreeing on a ratification make the possibility of such a ratification entirely impractical?
Rule 14	Note: omit "that", insert "to which".
Various typographical and similar errors	<p>a. The syntax of the provisions from rule 15 onwards does not seem appropriate for Rules; rather, they are expressed in such a manner as to suggest that they should form individual items within a schedule to the Rules.</p> <p>b. Various references to the 'PHIPS' Act are not italicised but should be.</p> <p>c. Some margins need to be re-set (e.g., under rules 45 and 68-9).</p> <p>d. Rule 66 - paragraph (b) after "officer includes" should not end with a full stop.</p>