



INSTRUCTION GUIDE

Application form – Approval of merger and acquisition of health benefit funds

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Introduction

This Instruction Guide provides general information on making an application for approval to transfer health insurance policies to a health benefits fund of another insurer using the approved form – *Merger and acquisition of health benefits funds (HMPHI form)*. It does not constitute legal advice.

For further information, visit APRA's website at www.apra.gov.au or contact 1300 55 88 49 or by email at info@apra.gov.au.

Why apply to APRA?

The PHIPS Act prohibits an insurer from transferring health insurance policies to a health benefits fund of another insurer unless the insurers apply jointly to APRA in the approved form - HMPHI- for approval of the arrangement and the Applicants are able to demonstrate that the proposed transaction complies with all requirements of the PHIPS Act, the PHI Act, the APRA Rules and prudential standards.

What is the application process?

APRA's application process, as with its approach to supervision, is consultative. Each Applicant is assigned a responsible supervisor who is the main contact for the entity on all APRA-related matters.

The approved form HMPHI is available on the APRA website. The Applicants will be able to submit a draft application by providing either hard copy or electronic version to enable consultation with APRA prior to making an application for the purposes of s. 33 of the PHIPS Act. APRA's preference is for all documentation to be provided electronically to your responsible supervisor.

The Applicants will have the ability to amend the draft application at any time up until they lodge HMPHI in its final version.

While there is no legal obligation for APRA to comment on draft applications, APRA will endeavour to provide comments on draft applications as practicable.

Applicants should be aware that APRA may request any additional information it considers necessary to assess the application under s. 33 of the PHIPS Act post lodgement of HMPHI.

Applicants are strongly encouraged to submit a draft application and to discuss their proposal with APRA before making an application for the purposes of s. 33 of the PHIPS Act.

All applications will be processed within a reasonable time, having regard to the particular circumstances of each application, including the accuracy and completeness of the information and documents provided by the Applicants.

Applicants will be notified in writing of APRA's approval of the arrangement and of any requirements imposed on the Applicants in relation to the arrangement.

Should APRA be inclined to decline an application, it will advise the Applicants of its preliminary review and the reasons for it. The Applicants will have the opportunity to show cause why the proposed decision should be reconsidered and this submission will be taken into account in APRA's final decision.

Penalties for false information

Applicants should note that giving false or misleading information is a serious offence (see s. 136.1, s. 137.1 and s. 137.2 of the *Criminal Code Act 1995*). Where information is disclosed to APRA as part of this application, APRA may in turn disclose that information in any of the circumstances permitted by s. 56 of the *Australian Prudential Regulation Authority Act 1998*.

Guidance on completing the merger or acquisition of health benefits funds form

Guidance is provided on selected sections of the HMPHI form together with relevant commentary on selected items within these sections.

Lodgement of the HMPHI form and each document required by the form must be approved by the Boards of all Applicants prior to final lodgement with APRA.

Where a private health insurer (the transferee insurer) proposes to enter into an arrangement with one or more other private health insurers (the transferor insurers), documentation for each transferor insurer must be separately identified and submitted with the application.

Part A – General information

All questions in the HMPHI form must be completed

Part A of the HMPHI form requests general information about the Applicants including:

- the names of the parties to the transaction
- key contact details for each insurer; and
- details of other Government Agencies that have been or will be notified about this application (*if any*).

DRAFT merger/acquisition application

The Applicants are to select whether the application is to be treated as an application for the purposes of s. 33 of the PHIPS Act or it is intended only as a draft application - to commence preliminary discussions with APRA on the merger or acquisition transaction.

Where the application is to be treated as a formal application for the purposes of s. 33 of the PHIPS Act, at least two directors of each Insurer must sign Part C of the HMPHI form.

A1 and A2: Details of the applicants

Name of insurer

All parties to the arrangement must be registered private health insurers.

Contact persons

The contact persons must be available and have appropriate knowledge of the application to assist with any queries that APRA may have.

A3 – Merger/acquisition date

The Applicants are to provide details on the proposed date of the merger/acquisition and details on the basis for the proposed date. (Note: this date cannot pre-date APRA approval date)

A4 – Advice to other government agencies

If the Applicants have informed, or will inform any other government agency of this application, this is to be advised on the HMPHI form.

Part B – Supporting Documentation

Part B requires additional documents to support the application and to demonstrate ongoing compliance by the transferee with the PHIPS Act, PHI Act, APRA Rules and prudential standards post the merger/acquisition.

The information provided in this Instruction Guide is not intended to be a complete summary of all the relevant requirements and the considerations set out in the private health insurance legislation and prudential standards. Applicants are advised to refer to the relevant legislation, prudential standards, rules and prudential practice guides (where applicable) for further information.

B1 – Record of arrangement

B1.1 – Merger/acquisition arrangement

Attach a copy of the finalised deed of arrangement which will enable the legal transfer of policies, assets and liabilities from the transferring fund(s) to the receiving fund(s).

The document must be signed and dated by all parties to the agreement.

The document must address all requirements set out in s. 33 of the PHIPS Act and the APRA Rules including, but not limited to:

- details about the transferring and receiving funds;
- the date or the means of determining the date on which the arrangement is to take effect, and any conditions precedent to the agreement;
- valuation of assets and liabilities both before and after the merger/acquisition occurs;
- the transfer of policies;
- any financial benefits arising from the transaction.

B2 – Transferee Documentation

B2.1 – Business Plan

The transferee must submit with the application a business plan for each receiving fund covering the first 36 months of operation from the transfer date which addresses all matters listed in the APRA Rules, including but not limited to:

- a statement of the liabilities and assets of each receiving fund at the transfer date;
- a budget statement for each receiving fund for each month of the period of the business plan setting out in detail:
 - the projected income and expenditure for the health benefits fund;
 - the projected assets and liabilities at the end of each month;
 - the projected solvency and capital adequacy position of the health benefits fund at the end of each month;
- the ratio of management and administrative expenses to the estimated amount of premiums each month;
- a summary of proposed changes, if any to the marketing plan, including strategies and costs associated with the implementation of the arrangement and promotion of the fund;
- the estimated number of policy holders each month;
- a summary of any proposed changes to contractual arrangements with service providers;
- a summary of any proposed changes to benefits and premiums.

APRA expects the transferee's Appointed Actuary to be involved in the development of the business plan for each receiving health benefits fund.

B2.2 – Risk Management assessment

The transferee must submit with the application a copy of all documentation demonstrating the risk assessment undertaken by the Board and senior management of the merger/acquisition of health benefits funds, including (but not limited to) impact on premiums, product management, capital management, operational and IT risks.

B2.3 – Certification of Compliance

The transferee must submit with the application a certificate of compliance for each receiving fund confirming that the Board has considered the arrangement and that it meets and will continue to meet the requirements of the PHIPS Act, the PHI Act, the APRA Rules and prudential standards post the transfer date.

B2.4 – Appointed Actuaries Report

The transferee must submit with the application a report by their Appointed Actuary for each receiving fund which provides the opinion of the Appointed Actuary on:

- the accuracy within the business plan of:
 - the asset and liability estimates;
 - the monthly budget statements;
 - the projected solvency and capital adequacy position at the time of transfer and at any time over the first 36 months post the transfer date;
 - the ratio of management and administrative expenses to the estimated amount of premiums each month;
 - any changes to the Insurer's marketing plan post the transaction;
 - the estimated number of policy holders at the end of each month;
 - any proposed changes to the insurer's contractual procedures and arrangements with service providers;
 - any proposed changes to benefits and premiums;

- if there is more than one receiving fund, an assessment as to whether the proposed distribution of the assets and liabilities is fair;
- an assessment as to whether the arrangement is likely to result in any contravention of the prudential standards if it takes effect.

B2.5 – Due diligence report

The transferee is to provide APRA with a copy of the due diligence report(s) that outline the due diligence process undertaken by the Board and senior management prior to reaching a decision for the merger/acquisition of health benefits funds.

B2.6 – Statement/s issued to policy holders *(if any)*

The transferee must submit with the application a copy of any statement issued to policy holders informing them of the changes to the insurer's rules arising from the proposed merger/acquisition.

B2.7 - Summary of any submissions from policy holders *(if any)*

The transferee is to submit with the application a summary of any submissions from policy holders received in response to the proposed transaction.

B2.8– Constitutional Changes *(if any)*

The transferee is to submit with the application details of any amendments made to its Constitution prior to the transfer date required for the arrangement to take place.

B2.9 - Rule Changes *(if any)*

The transferee is to submit with the application details of any amendments made to its health benefit fund rules prior to the transfer date required for the arrangement to take place.

B3 – Transferor Documentation

B3.1 – Due diligence report

The transferor is to provide APRA with a copy of all documentation demonstrating the level of due diligence undertaken by its Board and senior management prior to reaching a decision to merge its health benefits fund(s) with those of the transferee.

B3.2 – Certification of compliance

For each transferring fund, the transferor must submit with the application a certificate of compliance confirming that its Board has considered the arrangement and is of the view that the arrangement meets, and the operation of the receiving fund from the transfer date in accordance with the arrangement, currently meet the requirements of the PHIPS Act, the PHI Act, the APRA Rules and prudential standards and have no reason to believe the transferring fund would cease to comply post the transfer date.

B3.3 – Appointed Actuaries Report

The transferor must submit with the application a report by its Appointed Actuary which provides the opinion of the Appointed Actuary on:

- the net asset position of each transferring fund immediately prior to and post the arrangement; and
- how the arrangement will affect the ability of the insurer to comply with HPS 100 and HPS 110 at the time of transfer and at any time over the first 36 months post the transfer date.

B3.4 – Statement/s issued to policy holders *(if any)*

The transferor must submit with the application a copy of any statement issued to policy holders informing them of the changes to the insurer's rules issued in accordance with s. 93-20(2) or s. 93-20(4) of the PHI Act.

B3.5 - Summary of any submissions from policy holders *(if any)*

The transferor is to submit with the application a summary of any submissions from policy holders received in relation to any aspect of the arrangement.

B3.6 – Constitutional changes *(if any)*

The transferor is to submit with the application details of any amendments made to its Constitution prior to the transfer date required for the arrangement to take place.

B3.7 - Rule changes *(if any)*

The transferor is to submit with the application details of any amendments made to its health benefit fund rules prior to the transfer date required for the arrangement to take place.

B4 – Additional Information

B4.1 - Additional matters *(if applicable)*

If an Applicant considers that there are matters not otherwise sought in HMPHI that it wishes APRA to take into account, the Applicant(s) should attach documents addressing these matters. This item is optional.

Part C - Attestation

Where the application is an application for the purposes of s. 33 of the PHIPS Act, the attestation in Part C must be completed by at least two directors of each insurer.

If the Applicants have indicated in Part A that the document is a draft application, the Applicants are not required to sign the attestation at Part C.

Glossary

ABN	Australian Business Number
ACCC	Australian Competition Consumer Commission
Applicants	the insurers (the transferee and the transferor) applying to APRA under s. 33 of the PHIPS Act to merge health benefits funds
APRA	Australian Prudential Regulation Authority
arrangement	<p>the arrangement between private health insurers, as referenced in s. 33 of the PHIPS Act, for the transfer to a receiving fund or funds of:</p> <ul style="list-style-type: none"> a) all health insurance policies which immediately before the transfer date were referable to the transferring fund; and b) other assets and liabilities of the transferor insurer to be transferred to the transferee insurer.
APRA Rules	<i>Private Health Insurance (Prudential Supervision) Rules 2016</i>
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
DoH	Department of Health
FSCOD Act	<i>Financial Sector (Collection of Data) Act 2001</i>
HPS 100	<i>Prudential Standard HPS 100 Solvency</i>
HPS 110	<i>Prudential Standard HPS 110 Capital Adequacy</i>
HMPHI	application for the approval to merger health benefits funds – the approved form – as required by s. 33 of the PHIPS Act
health benefits fund	<p>a fund established in the records of a private health insurer and relates solely to:</p> <ul style="list-style-type: none"> a) its health insurance business, or a particular part of that business; and b) its health insurance business, or a particular part of that business, and some or all of its health-related businesses, or particular parts of those businesses.
insurer	a private health insurer registered under s. 15 of the PHIPS Act

Ombudsman	Private Health Insurance Ombudsman
PHI Act	<i>Private Health Insurance Act 2007</i>
PHIPS Act	<i>Private Health Insurance (Prudential Supervision) Act 2015</i>
policy holder	the holder of a policy that is referable to a health benefits fund of a registered private health insurer
prudential standards	those made under s. 92 of the PHIPS Act
policies	all the insurance policies as defined in the PHIPS Act that are referable to the transferring fund (including overseas student and/or visitor cover policies)
referable	as defined in <i>Schedule 1 – Dictionary</i> of the PHI Act
receiving fund	as defined in s. 33 of the PHIPS Act
transfer date	the date, or the means of determining the date, on which the arrangement is to take effect, which must not be before APRA approves the arrangement in writing
transferee insurer	as defined in s. 33 of the PHIPS Act
transferring fund	as defined in s. 33 of the PHIPS Act
transferor insurer	as defined in s. 33 of the PHIPS Act



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