



11 May 2018

By email: corporations.joint@aph.gov.au

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Submission: Options for greater involvement by private sector life insurers in worker rehabilitation

CHOICE, Financial Rights Legal Centre (**Financial Rights**) and Consumer Action Law Centre (**Consumer Action**) welcome the opportunity to provide comments on the Committee's Inquiry.

We understand that this Inquiry originates from submissions the Financial Services Council (**FSC**) insurers made to the Committee's inquiry into the life insurance industry in 2017.¹ In our view, there are many other positive recommendations from the Committee's report on that Inquiry which are of a higher priority to consumer and industry than the proposal which is the subject of this inquiry,

This submission is focused on the FSC's proposal for increased involvement of life insurers in workers rehabilitation, including:

- our assessment of key aspects of the FSC proposal,² including the conflict of interest it raises, the need for universal rehabilitation funding and the need to improve private health insurance to prevent gaps in cover from arising.
- significant questions which need to be answered by the FSC and insurers for us to provide any further comments on the proposal, and
- preliminary recommendations for the Committee in how it conducts this Inquiry.

¹ Parliamentary Joint Committee on Corporations and Financial Services, *Life insurance industry*, March 2018, paras 10.184 - 10.190.

² FSC, Options for greater involvement by private sector life insurers in worker rehabilitation, Submission 1, 2018.

Our organisations are acutely aware of the importance of assisting people to return to work after illness or injury. Appropriate funding for rehabilitation is critical.

Financial Rights have heard from many callers on the Insurance Law Service line who inquire about why their insurer cannot assist them in reimbursing their rehabilitation program or return to work costs, or assist in covering the gap between Medicare or their health insurance and their life insurance. However, on balance we are not convinced the industry proposal will lead to better consumer outcomes.

There are significant issues that would come into play if life insurers were to play a larger role in rehabilitation – particularly the obvious conflicts of interest that arise with life insurers having a financial interest in encouraging rehabilitation even where it may not be appropriate, in order to decrease or cease ongoing IP or TPD payments. The protection, support and best interests of incredibly vulnerable consumers must be front and centre of any proposed reform in this area.

As a first priority the committee should consider the adequacy of government support for rehabilitation programs and Medicare programs. The risk of disability and its impact on employment can impact anyone; likewise the solutions to these problems need to be universal. The piecemeal approach to policy in this space has clearly created gaps and inadequate access to rehabilitation services. The solution is not to add another layer of complication, but to address the lack of universality in the existing response.

To that end, an industry led response will never be capable of providing a universal solution, as it relies on people purchasing individual cover. Consumers and taxpayers will be better served by different approaches that keep life insurers out of the rehabilitation space.

Early return to work and insurers' conflict of interest

Conflict of interest

As beyondblue identified at the Committee's previous Inquiry, there would be a clear conflict of interest and 'perverse incentives' in a system where the insurer is both the payer of claims and is involved in arranging for claimants to return to work. We support the view of beyondblue that there needs to be an 'arms-length' relationship between these two activities.³ On its face, this type of system would exacerbate the risk of insurers positively assessing people's ability to work and forcing them into work when it is unsuitable or premature. An increase in people being pressured by insurers into returning to work when it is not appropriately is the most significant risk of the FSC's proposal. This has not been addressed by the FSC.

Financial Rights regularly speak to callers receiving Income Protection payments, who feel significant pressure from the insurer to return to work. Many of these callers are involved in mental health claims, who feel such pressure exacerbates their mental health condition or feel that rushing the process of recovery will impede their recovery. Similarly, other callers with significant physical injuries also feel pressure from their insurer and believe that if rehabilitation is rushed will make their condition worse.

³ Para 10.187.

As a first priority we maintain the adequacy of existing funding sources should be addressed before any consideration of insurer involvement in funding rehabilitation services. However, if a policy of greater involvement by life insurers in the process of rehabilitation is contemplated there must be a clear and unimpeachable demarcation between the rehabilitation process and any decisions by the life insurer to continuing or stop ongoing income protection payments or TPD. If reform were to occur, it would need to be structured in such a way that will protect consumers from life insurers prioritising their bottom line over the policyholders best interests.

The proposal by the FSC remains minimal, vague and unclear. In the first instance the definition of “early intervention” needs further clarity.

The proposal states that:

- *Customers and/or their treating physician would be required to provide consent for any early intervention payments;*

Any “early intervention treatments” should only be initiated by the treating physician or physicians in consultation with the injured or ill person. Protections should be in place to prevent insurers from initiating or suggesting treatments, or involving their own physicians, independent or otherwise.

- *Any early intervention treatment the life insurer offers to pay for, should be arranged through the customer and their treating physician(s).*

It is critical that the treating physician or physicians be completely independent of the insurer, and that any so called “early intervention treatment” be solely decided upon by the physician and the person with an injury or illness.

- *Life insurers will not coerce or pressure customers to seek treatment or return to work.*

Rather than trusting insurers to self-regulate their behaviour, specific consumer protections should be introduced to prohibit this coercion and introduce meaningful penalties in case of breaches. Case life insurers should be prohibited from harassing, coercing, pressuring or in any other way pushing in an inappropriate manner any “early intervention treatment.”

- *Life Insurers will not stop IP or TPD insurance payments merely because a customer refuses any treatment that is offered.*

This line from the FSC submission is particularly concerning when considering whether insurers should be trusted to adequately manage conflicts in funding rehabilitation services. Not stopping payments “merely” because a customer refuses treatment that is offered, indicates that while it may not be the sole factor in stopping payments, it is a factor that an insurer intends to consider. Under normal circumstances, where a person’s medical professional has recommended a treatment option and the person has refused it, this may be defensible as it indicates an unwillingness by the person to seek appropriate treatment. However, in the context of an insurer pushing an inappropriate treatment option it would be completely unfair on a person to be denied payment if one of the factors in the denial was a refusal of treatment.

To control for this conflict insurers should be barred from considering refusal of an insurer provided rehabilitation services in their decision making.

It is important to ensure that life insurers do not shift the focus of these products towards rehabilitation and return to work programs for the sake of saving money. We have noticed a rise in the increase products featuring rehabilitation extras and fear that life insurers would prefer to move towards providing rehabilitation products that suit their bottom lines rather than focusing on providing the financial support that people need and is the reason why they seek out life insurance in the first place.

On balance, the conflicts inherent in insurers both determining claims, particularly in cases of TPD, and having a role in funding rehabilitation services are potentially insurmountable. We maintain that a far more appropriate balance would be struck by adequately funding services through public provision.

Recommendation

- That the Committee examines other more appropriate arrangements for funding for return-to-work treatment, including through public funding of health services.
- That the Committee consider whether the conflict of interest in the FSC's proposal can be appropriately managed, noting the significant impact this conflict may have on vulnerable people during the claims process.

Questions for the FSC and insurers

- What is 'early intervention' under the proposed system?
- How would insurers manage the conflicts of interest inherent in both paying an insurance claim, and securing a person's early return to work, thereby avoiding payment of the claim?

Rationale for changing the role of life insurers

The FSC's proposal would mark a significant shift in the role of life insurers. In our view, the FSC's proposal does not make clear why the status quo is unworkable, and why expanding the role of life insurers will benefit people who make IP and/or TPD claims.

Under workers compensation schemes, claimants can request payment of certain medical treatment recommended by their own treating doctor. However, we are not aware of any schemes in Australia under which the insurer recommends and arranges medical treatment. This proposal is likely to significantly change the role of insurers' Independent Medical Examiners in life insurance.

The proposal also moves life insurers closer to the business models of health insurers. However, it is unclear from the proposal which consumer protections under the health insurance regime would need to be applied to the life insurance regime if this proposal were to be established (for example, the specific requirements to be a specialist for the purposes of health insurance or broader pricing protections through the community rating system).⁴

Recommendations

- That the Committee seek the views of the Australian Medical Association on the desirability of the FSC's proposal from the perspective of medical practitioners, including people's treating doctors and insurers' Independent Medical Examiners.
- That the Committee clarify the role of life insurers and health insurers in Australia, and the rationale for their separate regulation, including the nature and risks of their businesses.
- That the Committee examine any international examples of similar schemes and the rational and performance of these schemes for consumers, insurers and governments.

Questions for the FSC and insurers

- How would insurers' manage conflicts between the recommendations of a treating doctor and its own Independent Medical Examiner in deciding what treatment will be recommended and funded by the life insurer?

Impact on people and profits

The FSC has briefly described what it claims are some of the benefits of this proposal.⁵ While these would be desirable outcomes, there is no evidence to show how this proposal will achieve them.

We note that the FSC's proposal does not include any details or modelling of:

- Customer impact:
 - the number and categories of customers who would be impacted by this proposal,
 - the expected cost burden or saving for claimants seeking treatment,
 - the impact on claims outcomes, including the number of declined, withdrawn and disputed claims,
 - the impact on premiums,
 - the impact on the number and nature of customer disputes, including those which escalate to external dispute resolution at the Australian Financial Complaints Authority,
- Insurer impact:
 - the financial impact on insurers, including any prudential concerns,
- Government impact:

⁴ Health Insurance Act 1973 (Cth) s 3D.

⁵ FSC submission page 2.

- financial and other impacts on government, including the costs of:
 - Medicare,
 - employment schemes,
 - workers compensation schemes, and
 - the Disability Support Pension and National Disability Insurance Scheme,
- Other industry impact:
 - financial and other impacts on superannuation funds and other group life insurance policy holders, including financial arrangements between insurers and fund trustees,
 - financial and other impacts on health insurers,
- Risks and implementation
 - key risks under the proposed scheme to insurers, consumers, government and other industries, and how those risks would be managed, and
 - implementation and administration of the scheme, including in-house and with external service providers.

Without these critical details, it is not possible for us to understand and comment any further on:

- whether the benefits identified in the FSC proposal are likely or desirable, and
- the interaction of the proposal with existing medical, employment, compensation, injury and private health insurance schemes.

Recommendations

- That the Committee consider the views of the Australian Prudential Regulatory Authority regarding any prudential concerns with the FSC's proposal.
- That the Committee seek detailed modelling of the financial position of government services under the status quo as compared with the FSC's proposal.

Questions for the FSC and insurers

- Where is the modelling of the critical features and impacts of this proposal, as outlined above?
- How would insurers establish and administer these schemes, including contracts with and monitoring of any external service suppliers?

Consumer input

Our organisations have not been consulted by the FSC on this proposal. Because it was not raised in the early stages of the Committee's Inquiry last year, we did not comment on it in our contributions to that Inquiry. Considering this proposal has the potential to significantly change peoples' experience of making an IP or TPD claim, expert input from health, legal and other groups who work with people during the claims process is critical.

Question for the FSC and insurers

- Which consumer representatives did the FSC and insurers consult in developing this proposal? What are those consumer representatives' views on the proposal?

Fix private health insurance first

Apart from the public funding shortfalls in Medicare, many of the rehabilitation funding gaps identified have occurred due to poor policy in the private health insurance space. Where private health insurance benefits are exhausted consumers are left with sometimes large out of pocket expenses. As a first response we should be looking to fix the problems in private health insurance before attempting to paper over the cracks with yet another type of insurance.

Private health insurance has become a perfect storm for Australian consumers. Premiums have increased an average of 54.6% since 2009, well ahead of CPI. According to CHOICE's national Consumer Pulse survey, it is one of the hardest markets for people to find the product that best suits them.⁶ This toxic combination of surging prices and complexity is leading many Australians to downgrade or drop their cover completely. Consumers downgrading their cover combined with insurers eroding benefits to keep upfront costs lower is leading to major out of pocket costs for many people who use the private health system.

With rising premiums and out of pocket costs, consumers are increasingly questioning the value of their cover. Consumers are downgrading cover to manage these rising costs and are at risk of taking out very low value 'junk' policies that don't deliver good value to individuals or the Australian community. Currently policy settings, such as the private health insurance rebate and the medical levy surcharge, incentivise people to purchase private health insurance regardless of quality. People taking out low quality policies often only discover their lack of cover when it is too late, at claim time. Health insurers are incentivised to create gaps in their policies in order to appear better value. It would be better to fix this misalignment of economic incentives than opening the market to another set of insurers to fill the gap.

Some consumers are dropping cover altogether, leaving them at risk of struggling to take up private health insurance again if they are paying with the lifetime health cover loading. Those consumers who can afford private health insurance often find themselves saddled with unpredictable and high out of pocket costs when accessing the private healthcare system. Unexpected costs can total hundreds or thousands of dollars. Rather than adding a new layer of life insurance to make up for the failings of the health insurers, there are steps that government can take to improve the experience of health care for Australians. Some reforms are structural, touching on the blurry boundaries between public and private provision of healthcare, and radically simplifying the more-than-48,000 policies currently in the market.

⁶ CHOICE's quarterly Consumer Pulse survey tracks cost of living concerns with a representative sample of Australian consumers.

Other changes are about providing significantly better information. Consumers are hit with unexpected gaps in cover due to the paucity of quality information in health insurance. Learning from experiences in other 'perfect storm' markets like energy, financial services and telecommunications and consumer testing disclosure would all lessen the likelihood of consumers being out of pocket due to gaps in cover. Opening data to consumers and giving easy access to data about their needs and level of cover will help identify any gaps and help navigate complex choices in the purchase and switching journey.

Greater transparency of policy coverage and the cost of treatment and procedures in the private system will help reduce 'bill shock' and create a more competitive market. The confusion and complexity of the market has created poor demand-side competition and measures to address this will be crucial to creating a successful private health insurance market. This includes removing subsidies for products that provide little or no value to consumers and society as a whole, providing greater transparency on out of pocket costs, and helping consumers to understand their cover, compare it side-by-side and switch, upgrade or downgrade as needed.

While these measures to improve information and transparency in the private health insurance market may help drive competition and create a better market for consumers, there are problems in the private health insurance market that are best addressed structurally. Consumers seeking treatment, by their very nature of being in the healthcare system, are in a vulnerable position. They may be unable, despite best intentions to 'shop around' and fully understand the costs they may incur. Only structural changes to the way our system works, whether it is through changes to the lifetime health cover loading or by reining in the sometimes excessive out of pocket costs of medical procedures, will protect vulnerable people.

We understand the Minister for Health has established an expert committee to consider many of these issues and would encourage this inquiry to seek its views on the matters raised.⁷

Recommendations

- We refer to the CHOICE recommendations made to the Senate Inquiry into the Value and Affordability of Private Health Insurance and Out-Of-Pocket Medical Costs, in particular:
- 'Junk' policies should not attract the Private Health Insurance rebate or exempt high income earning people from paying the Medical Levy Surcharge.
- The Federal Government encourage an open data approach in the private health insurance market
- The current 'Standard Information Statement' is improved through consumer testing.

Please contact Susan Quinn at Consumer Action Law Centre on _____ or at
Drew MacRae at Financial Rights Legal Centre on _____ or

⁷ <http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/4459/Expert-committee-to-consider-out-of-pocket-medical-costs.aspx>

or Xavier O'Halloran at CHOICE on or
if you have any questions about this submission.

Yours sincerely,

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