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Submission of the Consumer Law Centre of the ACT & Care Inc Financial Counselling Service

to House Standing Committee on Health and Ageing Inquiry into Health Funding

September 2006

Our Services

Care Inc has been the main provider of financial counselling and related services to low income and vulnerable consumers in the ACT since 1983. Those services include:

- Financial counselling and information services (including an outreach service in Queanbeyan and a dedicated service for tenants and applicants of Housing ACT)
- Community Development and Education
- A No Interest Loans Program
- Participation in Policy Formation, Regulation and Law Reform

The Consumer Law Centre of the ACT is hosted by Care Inc. and a community legal centre. The legal service provides free legal assistance, advice and advocacy for low and moderate income consumers, primarily in the areas of debt, consumer credit, telecommunications and utilities, as well as general fair trading and consumer protection.

We work with some of the most financially and socially disenfranchised members of the ACT community and the combined experience of our services have informed this submission.

Issues Identified By Our Clients

Our services work with low to moderate income members of the community who are in financial hardship. Many of our clients are recipients of government pensions. The clients of our services cannot afford private health insurance which it is regarded as a luxury item. They rely upon the public health system and their experiences of the gaps therein are informative to the Inquiry's consideration of where funding for health services is failing to meet community needs.

In our casework, we have identified two significant areas of health care which our clients do not have access to because of the costs involved and the lack of public funding for treatment – dental procedures and mental health services. For example, a client used the available funds on her credit card to pay for living expenses until the limit was reached while her limited income was used to pay for psychological treatment and medication for her child whom has Asperger's Syndrome. Additionally, a project run by our service to assist people overcome household debt also identified lack of access to dental treatment as a recurrent theme. Clients allocated a significant proportion of funds available to them as part of the project to receive treatment. Overall, several thousands of dollars was used to pay for dental procedures from the project funding.

Emergency or unexpected procedures such as x-rays, after hours GP visits, ongoing non-PBS prescriptions and general surgery are also costly and frequently noted as sources of financial stress for our clients. In one instance, a client was compelled to accept a deal offered by a television show to have her child's surgery performed for free on TV because she could not afford to pay for the treatment otherwise. Another client who receives the disability support pension and has high medical costs has been forced to use her credit card to pay for those costs. For that client, meeting the minimum payments on the card is a struggle and the credit limit will soon be reached, at which point bankruptcy may be the only alternative.

We have also been advised by colleagues at the Consumer Credit Legal Centre (NSW), that some vulnerable and disadvantaged consumers have been forced to seek loans from "pay day lenders"[1] in order to meet health care costs for themselves and their children. These lenders charge very high interest (up to 48%) and exorbitant fees which make the loans very expensive, often leading to payment difficulty.

Based upon the growing difficulty of our clients' to meet the costs of heath care over the past 10 years, we believe that health care in Australia is moving from a universal, shared set of arrangements to a "two tier" system, with different funding arrangements and access to services for people of different means. Beyond our client's experiences, the evidence of this shift is all around us.

Bulk-billing practices are becoming rarer, costs under the Pharmaceutical Benefits Scheme (PBS) are increasing and the push to urge consumers into private health insurance is filled with federal government financial inducements. The financial sector now has a firm foothold in health care in the form of the private health insurance industry. The Australian Institute of Health and Welfare report on health spending for 2003-2004 found that out-of pocket medical expenses now average $1000 for every Australian. Medical credit cards and "patient financing" has arisen in this climate with the financial sector now extending its reach into health care through offering loans, at high interest rates, for discretionary or other services not covered, or only partially covered by Medicare and private insurance.

What Are Medical Credit Cards and Loans?

In 2005 two companies, GE Money and Macquarie Bank, introduced products in Australia which claim to be tailored to meet the costs of health care needs. CareCredit is offered by GE Money, the world's largest finance company and one of the biggest non-bank lenders in Australia. Australian Patient Finance is offered by Fundcorp Holdings Limited which is a wholly owned subsidiary of Macquarie Bank. Ostensibly these new products are marketed as being for medical costs, but in reality they are no more than interest-bearing credit

[1] For example businesses called Cheque Exchange, City Finance, Money Now. The lending is regulated by the Consumer Credit Code as well as State and Territory Fair Trading legislation.

facilities. How the products are sold, what the costs are and to whom the products are sold deserves careful attention.

In Australia, CareCredit is described by GE Money as a "revolving line of credit designed specifically for your health care needs". Applications for CareCredit are obtained and submitted by patients at their service provider's office. GE's marking material declares "usually you'll receive a decision while you wait". One of the most disconcerting features of the CareCredit product is that GE trains staff members who work at the offices of health care professionals to "present financial options to patients." This concept has significant implications, not only from a conflict of interest perspective but potentially under the Consumer Credit Code and fair trading legislation. These issues are discussed further below.

Patients can apply for limits from $500 up to $25,000. Paying off a CareCredit cards involves the choice between 12.9% interest or an interest free term. If a patient chooses an interest free term, the interest rate kicks up to 18.9% at the end of the 3, 6 or 12 month term. In addition an establishment fee of $25 also applies to all loans as does a monthly account service fee of $2.95 (this equates to annual fee of $60 the first year and $35 thereafter). Certainly the interest and costs are higher than a great number of credit cards or personal loans on the market, even within the banking sector.

Currently CareCredit is advertised as being available for eye surgery, dental treatment, general surgery, cosmetic surgery and veterinary expenses. Even though the introductory loan may come through the vet, it appears that this is an ongoing facility which consumers can then continue to draw upon at any other "participating" health care professionals office. GE states:

> *"you can use your CareCredit account at any CareCredit practice. As long as you have available credit on your account you can use your card for ongoing or new treatment and procedures without the need to reapply."*

GE's marking material also makes the claim that CareCredit "can be used by your entire family for their ongoing treatment needs without having to reapply." If the card holder does not have to be the recipient of the treatment benefit, this could lead to unauthorised use and introduces scope for sexually transmitted debt to occur which is discussed further below. Even more worryingly, it appears there is the ability to obtain a cash advance with the CareCredit card. This feature is also highly questionable.

Also introduced in 2005, Australian Patient Finance is the only other medical credit product in the Australian market currently. Similar to CareCredit, Australian Patient Finance provides funds for dentistry, general surgery, cosmetic surgery and laser vision surgery. But interestingly hair restoration is also funded. Patients can borrow $1,000 to $30,000 at interest rates ranging from 11.2% to 21.4% payable over 2-5 year terms via this unsecured personal loan product. With an application fee of $175 and a monthly service fee of $4.95 ($94/annum over a 5 year term), a loan with Australian Patient Finance is a much more expensive option than just about any credit card on the market.

We note that Macquarie Bank does not subscribe to the Banking Code of Practice, further, Macquarie Bank is a limited member of the Banking and Financial Services Ombudsman (BFSO) service and it is unclear if Australian Patient Finance would be covered by the

BFSO's jurisdiction. Both of these issues are of concern from a consumer protection perspective.

The application process is also similar to that of GE's CareCredit. It seems that to obtain a loan with Australian Patient Finance patients seek out a service provider who is accredited, apply over the phone and provide details of the required treatment which the practice confirms. Practitioners sign up to be an "accredited" practice and the introduce patients to the product at their offices. This application process may have the effect of directing clients away from non-accredited practices as well as indirectly putting pressure on service provider to become accredited.

Issues of Concern for Health Care Funding

At first sight both CareCredit and Australian Patient Finance may seem to be a product innovation, making it easier for people to purchase heath services they require or would like to have. However given the terms offered by CareCredit and Australian Patient Finance, we are of the view that medical credit products are not going to be accessed by economically secure consumers/patients who have a range of options available to them. The products are most likely to be used by those with limited access to cash resources to fund treatments which the public system is failing to cover.

There are serious social, moral and legal implications of medical credit entering the Australian market which we will highlighted below. Some clients of our services have managed to arrange payment plans with service providers before and after treatment which is a functional budgeting tool. Those payment plans have not attracted interest or charges. However medical credit is tied to service providers and may bring to an end such positive arrangements.

It is our view that medical credit cards and loans have significant implications in a number of areas including:

1. Informed Consent

The manner in which the products are sold and the environment in which the decisions are made raise implications in the area of informed financial consent. Patients may be making financial decisions based upon emotion rather than affordability and based upon potentially biased advice. The method of product introduction by the practitioner would inevitably lead to the impression that the service provider was endorsing and recommending the products.

2. Confidentiality & Privacy

Applications for finance with either lender require disclosure by the service provider as to the nature and costs of the treatment proposed to those lenders. This has implications in terms of doctor-patient confidentiality.

Also, presumably CareCredit and Australian Patient Finance will carry out inquiries into a patient's credit history before approving the applications for finance. Such inquiries will appear on the credit files of those persons. A typical entry may state: "On [date] Australian Patient Finance made an inquiry in relation to an application for a loan of $20,000". Any other lender reviewing the patient's credit file would see this entry for a number of years. This has implications in terms of privacy and confidentiality.

3. Diverting Funds and Resources To Optional Treatments

Medical credit cards and loans present a moral hazard for the funding of health care in that there could be a diversion of resources away from where most therapeutic benefit is delivered towards where there is the highest capacity to pay. This may also be the case in the distribution of service providers whom may choose to enter more highly paid areas of practice (ie cosmetic surgery) if demand for that area of practice increases while the field of available trained service providers says low.

4. Recommendation of Unnecessary Treatments

The easy availability of credit could encourage service providers to promote unnecessary services. Both CareCredit and Australian Patient Finance advertise to service providers on the basis that their products will result in an increased acceptance of elective treatments. Australian Patient Finance in particular states:

> "repayment plans may increase treatment acceptance amongst potential patients by providing them a simple and convenient way to pay for their procedure."

In a similar vein, CareCredit asserts that its product is a convenient way for patients to pay for emergency care, gap payments and treatments not covered by insurance. Testimonials placed on CareCredit's American website quotes service providers lauding the GE product for "increasing elective treatments by up to 400%." That's big money and has significant implications to impact upon the relationships between service providers, patients and the private health industry.

5. Recommendation of More Costly Treatments

The easy availability of credit could encourage service providers to promote more costly treatments than if that treatment were publicly financed or directly met by the patient. This has significant implications to impact upon the relationships between service providers, patients and the private health industry.

6. Costs of Treatment

The easy availability of credit could falsely inflate the price of financed treatments and push up the costs of health care. For example, the availability of interest free payment terms on electrical and other "lifestyle goods" (ie. computers and televisions) may have triggered the explosion of such purchases in recent years and may have contributed to the increased costs of those products.

7. Patient Churn and Pressure on Service Providers to Participate

The products may lead to patients switching away from "non-accredited" practises, which could also induce hesitant service providers to sign up with CareCredit and Australian Patient Finance as a client retention measure.

8. Legal Hazards

From a credit law point of view, we are of the firm belief that there are legal hazards involved in how the products are marketed, introduced, sold and how the debts could be collected. In particular:

- Sexually Transmitted Debt / Debt Collection; and
- Unjust Lending.

There are several reasons why the safety and fairness of medical credit products are questionable. There is potential for problems with the fairness of such contracts that could arise in both the manner and method in which the products are sold as described above. As such there are significant questions for service providers who introduce patients to medical credit. For example:

- Do these products turn service providers into finance brokers or agents of the companies involved?
- Could the representations made about the products by service providers have implications under Fair Trading legislation or the Australian Securities and Investment Commission Act?
- Would service providers become joint defendants in actions against GE Money or Macquarie Bank where breaches of the Consumer Credit Code are alleged?

Section 70 of the Consumer Credit Code details a number of factors to determine if a consumer credit transaction is unjust. Notably, are subsections (a), (i) & (k) which ask whether the explanation provided about the consequences of non payment was adequate. It is difficult to see how these requirements can be met when the applications occur at the office of health care professionals with the assistance of support staff thereat. Subsections (f) and (j) allow a court to consider whether the debtor had the power to protect their own interests due to their physical or mental condition and whether undue influence or pressure was exerted. That issue may arise if the treatment required compromises that capacity and is the source of the undue pressure. Most significantly, subsection (l) allows a court to consider whether the credit provider knew or would have known on reasonable inquiry that the debtor could not pay or not without suffering substantial hardship. Presumably a service provider's knowledge about that patient will be relevant in this regard. In our view, it seems likely that health care professionals could become joint defendants where claims are made by consumers of unjust lending and unconscionable conduct tied to the origination of the finance.

In relation to "sexually transmitted debt" CareCredit's product in particular could expose a consumer to this problem. For example, where treatment benefit is obtained by the non-card holder, debt collection will be directed to the card-holder regardless of fact that they did not receive a benefit from the use of the funds. In consumer law, this often occurs in relation to car loans and personal loans where a woman is left responsible for a loan which is in her name alone, but where the car is in the possession of and registered to the male ex-partner. Clearly this is a complication and risk which would not have otherwise existed in health care. This also has implications to shift the relationship between service providers and patients as well as between insurers and service providers.

Concluding Remarks

In our view, the products have arisen because of a lack of funding in key areas of health care and in an environment where funding has shifted away from universal coverage. We firmly believe that these products will shift the nature and direction of health care provision in Australia as well as increasing the costs. The larger moral and policy question is; should heath care be sold like a plasma screen TV? Medical credit is a symptom of a health care system which is not meeting the needs of the community in vital areas of care. Our view is that the provision of adequate health services is a matter of human rights which must be met by sound government policy solutions.