

**For information on  
18 February 2014**

**Legislative Council Panel on Health Services  
Subcommittee on Health Protection Scheme**

**Detailed Proposal on the Setting up of a Dedicated  
Regulatory Agency for the Health Protection Scheme**

**PURPOSE**

This paper briefs Members on the proposal for setting up a dedicated regulatory agency for supervising the implementation and operation of the Health Protection Scheme (HPS).

**BACKGROUND**

2. In the Second Stage Public Consultation on Healthcare Reform, it was proposed that a governing framework be put in place for implementing the HPS. The governing framework was proposed to comprise three separate but inter-related components, namely, (a) prudential regulation of insurers<sup>1</sup>, (b) quality assurance on healthcare services, and (c) scheme supervision.

3. The existing regulatory regimes have already been managing issues related to the first two components. The role of prudential regulation of insurers is being taken up by the Office of the Commissioner of Insurance (OCI). When the HPS is in place, the OCI or the future Independent Insurance Authority (IIA) proposed to be established in place of OCI, should continue to serve this function. As regards quality assurance of healthcare services, the existing regulatory institutions of private healthcare facilities and healthcare professionals, namely the Department of Health (DH) and the relevant statutory boards, councils and professional bodies, should continue with their work under their respective responsibilities. In this connection, we are conducting a root-and-branch review on the regulation of private healthcare facilities,

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<sup>1</sup> The purpose of prudential regulation is to supervise, inter alia, the financial soundness of insurers participating in the HPS and to ensure the financial capability of insurers to discharge obligations to the insured.

encompassing both private hospitals and high-risk procedures performed in ambulatory setting. As regards the regulation of insurance intermediaries, we propose that this function should continue to rest with the existing self-regulatory bodies<sup>2</sup> or the IIA after its establishment.

4. As regards scheme supervision, we propose that a new dedicated regulatory agency (the regulatory agency) should be set up to perform the functions essential for ensuring a smooth implementation and operation of the HPS, and to ensure that the policy objectives of the HPS can be achieved. The proposal is consistent with the common practice in countries such as Australia, Ireland, the Netherlands, Switzerland and the United States, where private health insurance is an important health policy tool in healthcare financing (a summary of the regulatory framework for private health insurance of the five countries is at **Annex**). In each of these countries, there is a specialist health insurance regulator which enforces the statutory requirements for private health insurance products.

## **GUIDING PRINCIPLES**

5. When setting out the powers, functions and organisation of the regulatory agency, we have given due regard to the following considerations -

- (a) the regulatory agency should contribute to and facilitate the implementation of the policy objectives of the HPS, so as to provide value-for-money private health insurance products to those who are able and willing to use private healthcare services;
- (b) to avoid unnecessary duplication of functions, the regulatory agency should work closely with existing regulatory bodies where the responsibilities of such bodies concern the regulation of private health insurance;
- (c) a balance should be struck between safeguarding legitimate

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<sup>2</sup> Insurance Agents Registration Board, Hong Kong Confederation of Insurance Brokers and Professional Insurance Brokers Association.

public interests through regulation and the need to minimise adverse regulatory aspects such as excessive compliance and administrative costs; and

- (d) due regard should be given to circumstances unique to the local markets for the provision of health insurance and healthcare services, while taking into account relevant experiences and lessons learnt from regulatory frameworks adopted by overseas jurisdictions for private health insurance.

## **FUNCTIONS AND POWERS**

6. We propose that the regulatory agency should perform a host of functions that are regulatory or facilitating in nature. In the regulatory aspect, the functions of the regulatory agency should include at least the following –

- (a) promulgate, review and enforce rules and regulations concerning the Minimum Requirements prescribed by the Government for individual-based indemnity hospital products; and the “conversion option” proposed for group-based indemnity hospital insurance products;
- (b) register individual-based indemnity hospital insurance products that comply with the Minimum Requirements;
- (c) maintain file records of grandfathered individual-based indemnity hospital insurance policies, and group-based indemnity hospital insurance products;
- (d) manage and monitor the operation of the High Risk Pool;
- (e) promulgate, review and enforce codes of practice or guidelines relating to the HPS;
- (f) ensure the transparency of HPS products, including setting up a website to facilitate easy comparison of premiums and product features of HPS products offered by different insurers;

- (g) handle non-claims complaints by consumers, including investigation of cases of non-compliance with rules and regulations described in (a) and (e) above;
- (h) refer cases to the appropriate regulatory bodies or professional self-regulatory bodies for investigation and handling as necessary and appropriate; and
- (i) administer and/or monitor, if any, financial incentives or subsidies to be provided by the Government to support the implementation or operation of the HPS as appropriate.

7. We propose that the regulatory agency should perform at least the following facilitating functions –

- (a) build up market infrastructure to facilitate the implementation of the HPS, e.g. developing information systems for product registration, data collection and publishing of data from various sources (e.g. insurers and private healthcare service providers), etc.;
- (b) liaise with relevant supervisory and regulatory agencies (e.g. Food and Health Bureau (FHB), DH, Hospital Authority (HA), OCI, other professional self-regulatory bodies, etc.);
- (c) set up a platform for health insurers and private healthcare service providers to discuss matters related to the HPS; and
- (d) consumer education on the HPS.

## **LEGAL FORM AND ORGANISATION STRUCTURE**

### **Government-led**

8. We consider it more desirable for the regulatory agency to be set up in the form of a Government-led body in order to ensure direct accountability to the public in the implementation of the HPS. A

Government agency would also possess the necessary administrative and operational experience in carrying out its functions effectively. In all of the five overseas jurisdictions under study, the health insurance regulator is a Government-led body.

9. We propose to set up the regulatory agency as an administrative unit under FHB, such that the regulatory agency could respond quickly to policy directives from the Government. The objectives, power and responsibilities of the regulatory agency would be clearly defined in the form of legislation to provide the regulatory agency with sufficient authority in executing its function.

10. In the long-run, depending on the implementation of the HPS and under necessary circumstances, the regulatory agency could take the form of a statutory authority independent from the Government. As an organisation independent from the Government, the regulatory agency would have more flexibility in operation and staff recruitment. It can also better respond to local and overseas market changes as well as developments in international regulatory requirements, thereby facilitating a healthy development of the health insurance industry and providing better protection to the public.

### **Organisation Structure**

11. We propose to establish an advisory committee comprising major stakeholders (including members from the insurance industry, private healthcare service providers, relevant regulatory bodies and other stakeholders) to provide professional advice to the regulatory agency concerning the operational details of implementing the HPS. It can also act as a platform for stakeholders to exchange views on the HPS. If necessary, a number of supporting committees could be established to advise the regulatory agency on specific areas of work.

12. To ensure proper exercise of power by the regulatory agency, we propose that a review committee should be appointed to, upon appeal by an aggrieved party, review the decisions made by the regulatory agency in respect of its regulatory functions described in paragraphs 6 (a), (b), (e) and (g). In cases where a party considers itself to be aggrieved

by the decision of the regulatory agency in these areas, it may appeal to the review committee for reconsideration of the case. To ensure impartiality, the review committee could comprise mainly non-official members appointed by Secretary for Food and Health (SFH), and the operation of the review committee should be independent from the regulatory agency.

## **INTERFACE WITH OTHER REGULATORY BODIES**

13. The regulatory agency should liaise closely with other regulatory bodies to ensure effective coordination between various regulatory bodies related to private health insurance. For example, on issues concerning prudential regulation, the regulatory agency should work with the OCI or the proposed IIA. On cases regarding the professional conduct of insurers or insurance intermediaries, the regulatory agency should maintain close communication with the existing professional self-regulatory bodies, or the proposed IIA upon its establishment. On regulatory issues requiring joint investigation or cooperation between the regulatory agency and other regulatory bodies, we will explore possible means for enhancing collaboration among parties concerned, including the desirability and possibility of signing a memorandum of understanding to clarify their respective responsibilities and roles of each of these regulatory bodies.

## **ADVICE SOUGHT**

14. Members are invited to note the proposal for setting up a dedicated regulatory agency for the HPS.

**Food and Health Bureau**  
**February 2014**

### Summary of Regulatory Framework For Private Health Insurance (PHI) in Selected Countries

	Australia	Ireland	Netherlands	Switzerland	United States
<b>Role of PHI</b>	Supplementary (voluntary PHI)	Supplementary (voluntary PHI)	Primary (mandatory PHI) and supplementary (voluntary PHI)	Primary (mandatory PHI) and supplementary (voluntary PHI)	Primary (mandatory PHI <sup>1</sup> )
<b>Key legislation on health insurance</b>	Private Health Insurance Act	Health Insurance Act	The Health Insurance Act	The Federal Law on Health Insurance	Patient Protection and Affordable Care Act
<b>Main health insurance regulator</b>	The Private Health Insurance Administration Council (PHIAC) reporting to the Department of Health and Aging	The Health Insurance Authority (HIA) reporting to the Minister for Health and Children	The Dutch Healthcare Authority (NZa) and the Health Insurance Board (CVZ)	Mandatory PHI: the Federal Office of Public Health (FOPH) reporting to the Federal Department of Home Affairs  Supplementary PHI: the Financial Market Supervisory Authority (FINMA)	State regulatory authorities in conjunction with the federal Centre for Consumer Information and Insurance Oversight (CCIIO)
<b>Is the specialist health insurance regulator Government-led?</b>	Yes	Yes	Yes	Yes	Yes

<sup>1</sup> Under the Patient Protection and Affordable Care Act (PPACA) of 2010, individuals are required to obtain PHI coverage starting from 2014.

	Australia	Ireland	Netherlands	Switzerland	United States
<b>Is the specialist health insurance regulator also responsible for prudential regulation?</b>	Yes	No	No	Yes (for mandatory PHI)	Varies by States
<b>Key functions of the specialist health insurance regulator</b>	<ul style="list-style-type: none"> <li>• Registration of private health insurers</li> <li>• Prudential regulation of private health insurers</li> <li>• Administer the Risk Equalization Trust Fund</li> </ul>	<ul style="list-style-type: none"> <li>• Enforce compliance with product regulation</li> <li>• Administer premium levies and subsidies</li> </ul>	<p>NZa:</p> <ul style="list-style-type: none"> <li>• Registration of health insurers and their products</li> <li>• Monitor performance and market conduct of health insurers</li> <li>• Supervise healthcare providers</li> </ul> <p>CVZ:</p> <ul style="list-style-type: none"> <li>• Advise on the mandatory benefit package</li> <li>• Administer risk equalization mechanism</li> </ul>	<p>FOPH:</p> <ul style="list-style-type: none"> <li>• Enforce compliance with product regulation on mandatory PHI</li> <li>• Prudential regulation of health insurers</li> </ul> <p>FINMA:</p> <ul style="list-style-type: none"> <li>• Enforce compliance of supplementary insurances</li> <li>• Review and approve private insurance operations</li> </ul>	<p>State regulator:</p> <ul style="list-style-type: none"> <li>• Registration of health insurers</li> <li>• Product and market conduct regulation</li> <li>• Prudential regulation of health insurers</li> </ul> <p>CCIIO:</p> <ul style="list-style-type: none"> <li>• Provides national oversight on compliance with federal insurance market rules</li> </ul>