

**For information on
18 February 2014**

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

**Proposed Claims Dispute Resolution Mechanism for
the Health Protection Scheme**

PURPOSE

This paper briefs Members on the proposal for establishing a claims dispute resolution mechanism (CDRM) to provide an independent and credible channel for consumers to resolve claims disputes under the Health Protection Scheme (HPS).

2. As suggested in the Second Stage Public Consultation on Healthcare Reform, we propose to establish a CDRM under the HPS for better consumer protection. The objective is to provide an independent, impartial, easily accessible, expeditious and affordable channel to resolve monetary disputes concerning claims settlement of private health insurance as an alternative to litigation, which is in general a much more costly and protracted process.

**EXISTING MECHANISMS FOR HANDLING CLAIMS DISPUTES
RELATED TO PRIVATE HEALTH INSURANCE IN HONG KONG**

3. Apart from legal proceedings, there are currently several avenues in Hong Kong for handling disputes related to health insurance claims. A major channel is the Insurance Claims Complaints Bureau (ICCB), a self-regulatory body funded by the insurance industry that handles complaints about insurance claims arising from nearly all types of individual insurance policies¹ taken out in Hong Kong. It has accumulated rich experience in handling claims disputes² arising from

¹ ICCB does not deal with commercial, industrial and third-party insurance.

² ICCB's Complaints Panel consists of members from other professional fields (legal, accounting and consumer representative). It adjudicates on claims complaints with reference to the advice of honorary secretaries, who are members of the insurance industry who voluntarily offer their service to the ICCB. All members of the ICCB's governing body (General Committee) are from the insurance industry.

individual insurance policies, including health insurance policies. The decision of the ICCB is binding on the insurer but not the consumer, who can resort to legal redress if he/she is not satisfied with the outcome.

4. If an insurance claims dispute involves a financial institution which is one authorised by the Hong Kong Monetary Authority or licensed by/registered with the Securities and Futures Commission, consumers may also resort to the Financial Dispute Resolution Centre (FDRC) for dispute resolution through mediation³ or, failing which, arbitration⁴.

5. Meanwhile, the Office of the Commissioner of Insurance (OCI) maintains a monitoring role to ensure that complaints are properly handled. The Consumer Council also helps consumers follow up complaints with the relevant institutions or entities for appropriate action.

OVERSEAS EXPERIENCE

6. The Consultant (PricewaterhouseCoopers Advisory Services Limited) appointed by Food and Health Bureau to carry out a study on the HPS has examined overseas experience and found the concept of CDRM consistent with the international trend of progressively accepting and expanding the function of independent alternative dispute resolution (ADR) mechanisms to settle insurance disputes (a summary of the ADR mechanisms in the five selected countries is given at **Annex**).

7. Although the design of ADR mechanisms differs place by place, the Consultant observed that their independence and credibility are essential for fostering confidence for all parties concerned. Most governments either manage the mechanism direct or have imposed proper governance on the mechanism. Besides, the ADR mechanisms should offer quick resolution with minimal formality in order to lessen the

³ Mediation is a voluntary, non-binding and private dispute resolution process. An independent and neutral mediator helps the parties communicate in a rational way. The aim of mediation is to reach a solution that both parties can agree. The agreement is private and confidential.

⁴ Arbitration is a form of legal process where the disputes are not heard by a court but by a private individual or a panel of several private individuals known as arbitrators. An arbitrator is usually appointed by agreement of the two disputing parties to facilitate the fair and speedy resolution of disputes; to act fairly and impartially between parties; and to give the parties a reasonable opportunity to present their cases. Arbitration, unlike court proceedings, is conducted in private and generally less formal settings. Arbitration awards are final and binding on the parties.

administrative caseload and settle the dispute expeditiously. It is a common requirement in jurisdictions studied that the complainant should first attempt to settle the dispute with the financial institution before reverting to the ADR mechanisms. The ADR mechanisms usually encompass mediation, while there is no consensual approach regarding whether arbitration should also be instituted in the mechanism after mediation fails to settle a dispute.

PROPOSAL FOR CDRM UNDER THE HPS

8. We consider that the future CDRM should provide an independent and credible claims dispute resolution channel for policyholders of HPS policies in order to meet public aspirations. The main features of the CDRM are described in the ensuing paragraphs.

(A) Coverage

9. We propose that the CDRM should cover all monetary disputes related to claims arising from individual-based HPS policies. The proposal of covering claims disputes of individual policies is consistent with overseas practice, where individual consumers are eligible claimants under the ADR mechanisms because they are in general less financially capable in resorting to legal proceedings to settle claims disputes.

10. Apart from individual-based HPS policies, we have considered whether it is necessary or desirable to expand the function of the CDRM to cover claims disputes arising from group-based private health insurance policies, or claims disputes between insurers and healthcare service providers under direct billing arrangement. After careful consideration, we propose not to cover these types of claims disputes during the initial phase of implementation of the HPS. Although there is currently no dedicated channel for settling these types of claims disputes, we recognise that business customers and healthcare service providers usually have larger bargaining power and greater financial resources in settling claims disputes with insurers. We propose that at the initial stage of the implementation of the HPS, public resources should be focused on assisting retail customers. In the longer-run, depending the experience and caseload of the CDRM, we may consider whether it is necessary and desirable to widen its scope.

(B) Operation

11. From overseas experience, mediation and arbitration are the two most widely used forms of ADR mechanisms. We will consider adopting mediation and/or arbitration under the CDRM with reference to local and overseas experience and in consultation with the industry. Subject to the caseload of the CDRM, we propose that secretariat support to the CDRM could be taken up by the HPS regulatory agency (please refer to the Administration's other paper "Detailed Proposal on the Setting up of a Dedicated Regulatory Agency for the Health Protection Scheme").

(C) Interface with Existing Mechanisms

12. Given that the CDRM would share some similarities with the existing FDRC, and to lesser extent the ICCB, in terms of functionality, we will explore the room for building the CDRM on the foundation of the existing FDRC/ICCB. If it is necessary to set up a separate CDRM under the HPS, we will endeavor to maximize synergy with the FDRC/ICCB and establish a communication mechanism to avoid causing confusion to consumers. We will further discuss the interface arrangements with the FDRC and ICCB.

13. In the long-run, it would be ideal to have a single claims dispute resolution channel to help avoid confusion and enhance administrative efficiency. In such case, we will discuss with relevant stakeholders on how the functions of the CDRM could be consolidated with existing mechanisms.

ADVICE SOUGHT

14. Members are invited to note the proposal for establishing the CDRM under the HPS.

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Mechanism for Handling Private Health Insurance Claim Disputes in Overseas Jurisdictions

	Australia	Ireland	Netherlands	Switzerland	United States
Responsible Organisation	Private Health Insurance Ombudsman (PHIO)	Financial Services Ombudsman	Health Insurance Complaints & Disputes Foundation (SKGZ) (comprises Health Insurance Ombudsman and Health Insurance Disputes Committee)	Health Insurance Ombudsman	Varies by State. Some States adopt the Federal Department of Health & Human Services (DHHS) dispute resolution mechanism (managed by government but function outsourced to a private organisation). Other States allow insurers to choose an accredited Independent Review Organisations (IRO) which satisfy Federal standards for conducting external review
Sector coverage	Private health insurance	Financial services such as banks, insurance, investment companies etc.	Mandatory and supplementary private health insurance	Mandatory and supplementary private health insurance	Private health insurance ¹

¹ Under the Patient Protection and Affordable Care Act (PPACA) of 2010, consumers covered by individual or group health insurance plans (except grandfathered plans) have the right to appeal decisions, including claims denials, made by their health insurers.

	Australia	Ireland	Netherlands	Switzerland	United States
Types of disputes covered	Disputes about private health insurance, including claim and non-claim disputes	Claim disputes, mis-selling charges, maladministration of insurance companies, etc.	Disputes about private health insurance, including claim and non-claim disputes	Disputes about private health insurance, including claim and non-claim disputes	Disputes about private health insurance, including claim and non-claim disputes (including disputes involving claims denial due to medical opinions, e.g. insurer believes procedure was not medically necessary)
Legal form	Government agency	Statutory body	Private company	Private company	DHHS: government agency IROs: private company accredited by a nationally recognised accrediting organisation

	Australia	Ireland	Netherlands	Switzerland	United States
Governance	The Ombudsman is appointed by the Minister for Health and Ageing	Overseen by The Financial Services Ombudsman Council	The Board of Directors	The Board of Trustee	<p>DHHS: Federal Government governs the process and appoints a private company to handle all cases.</p> <p>IROs: self-governing but must be accredited by a nationally recognised accrediting organization. In some states, IROs are also required to apply for certification issued by state governments.</p>
Dispute resolution process	Mediation	Mediation (optional) and adjudication	Include two procedures: mediation by the Health Insurance Ombudsman and/or arbitration by the Health Insurance Disputes Committee	Mediation	<p>DHHS: outcome based on examiner's review and decision</p> <p>IROs: outcome based on IRO's review and decision</p>

	Australia	Ireland	Netherlands	Switzerland	United States
Who can complain?	The insured, insurers and providers. Mostly insured in reality. Complainants must demonstrate attempt to resolve disputes with the complainee first.	Individual consumers and small businesses. Complainants must demonstrate attempt to resolve disputes with the complainee first.	Individual consumers. Complainants must demonstrate attempt to resolve disputes with the complainee first.	Individual consumers. Complainants must demonstrate attempt to resolve disputes with the complainee first.	The insured, insurers and providers. Complainants must first go through the internal appeal process of insurance companies.
Claims limit	None	Euro 250,000	None	None	None
Final decision binding?	Not binding	Binding, subject to appeal to the High Court	Not binding (Health Insurance Ombudsman) Binding (Health Insurance Disputes Committee)	Not binding	Binding

	Australia	Ireland	Netherlands	Switzerland	United States
Funding	Government revenue	Levy from financial services providers	Levy from each insured person plus grant from the Minister of Health	Insurance companies	DHHS: Federal Government (no cost to insurers and policyholders). IRO: costs often borne by insurers. In some States, user fee may be paid by consumer (see row below)
User fee on complainant	None	None	None (Health Insurance Ombudsman) 37 euro (Health Insurance Disputes Committee) (refundable if decision is in favour of the consumer)	None	Maximum US\$25 per review on consumer complainants, refundable if external review decision is in favour of the consumer

	Australia	Ireland	Netherlands	Switzerland	United States
Relationship with regulator	Required to submit an annual report to the Minister for Health and Ageing	The governing council is appointed by the Minister for Finance	There are regular meetings with the relevant regulatory bodies and SKGZ would report to regulators as necessary	Does not have a reporting relationship to the regulator	DHHS: DHHS is both regulator and administrator of the dispute resolution systems. IROs: IROs must be accredited by a nationally recognised accrediting organisation and potentially a state regulator also, but reporting requirements vary by State.

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