11th June 2021

Darrell Channing
Director Competition Exemptions Branch Australian Competition & Consumers Commission 23 Marcus Clarke Street
Canberra ACT 2601
Email: exemptions@accc.gov.au

Dear Mr Channing,

AA1000542 – Honeysuckle Health – Submission

I write with my colleagues in response to your invitation to provide a response to the Honeysuckle Health application for Authorisation AA1000542.

We are writing to express our objections to this application.

The Australian Medical Association President has made clear that "this is a recipe for less choice and inferior care in the long term".

https://medicalrepublic.com.au/honeysuckle-deal-sounds-sweet-but-theres-a-sting/46670

AMA President Dr Khorshid said, "We are seeing increasing efforts by private health insurers to enter unregulated contracts with medical specialist with very clear aims. "Insurers want to exercise greater control over the care that patients receive and this is a recipe for less choice and inferior care in the long term. A GP referring a patient privately under these circumstances may be frustrated and concerned that their patient's choice and improved access to care - the very reasons for their cover - will be constrained by the 'straitjacket' created by these arrangements."

The AMA has highlighted that NIB has scored very poorly in past AMA Private Health Insurance Report cards for the level of benefits it funds for selected medical services.

https://ama.com.au/media/new-regulator-needed-prevent-rapacious-behaviour-health-insurers

Cigna is a multinational managed healthcare and insurance company with multiple past and present law suits. According to the violation tracker corporate misconduct database (https://violationtracker.goodjobsfirst.org/parent/cigna), Cigna has paid $437,250,292 to settle violations / offences since the year 2000. Data collected on offense groups for Cigna list (top 5) offense groups as government-contracting-related offences, consumer-protection-related offences, employment-related offences, competition-related offences and healthcare-related offenses and (top 5) primary offense types as false claims act and related, benefit plan administrator violation, consumer protection violation, kickbacks and bribery and insurance violation. The penalties that Cigna has paid for these offenses is a matter of public record. Violation tracker is produced by The Corporate Research Project, which focuses on identifying information that can be used to advance corporate accountability campaigns.

GP Dr Aniello Iannuzzi, Chair of the Australian Doctors Federation, has declared "In my opinion, the HH (nib/Cigna) application will introduce US-style managed care into Australia. Moreover, I consider the HH application a direct threat to Medicare and Australian private hospitals."

https://insightplus.mja.com.au/2021/8/honeysuckle-health-proposal-is-thin-end-of-disastrous-wedge/

We note that HH CEO Rhod McKensey is referenced as having "stressed that Honeysuckle Health was not seeking to limit patient options. "[There is] no intention to ever interfere in the clinical relationship between the doctor and the patient," he told *TMR*. "If that's the definition of managed care, then we are not looking at managed care." Instead, he indicates Honeysuckle Health is "looking to help drive a shift toward value-based care… (taking) a partnership-based approach".

https://medicalrepublic.com.au/honeysuckle-deal-sounds-sweet-but-theres-a-sting/46670

This is a deceptive re-branding of managed care, which is defined by the Cambridge dictionary as “A system in which medical costs are controlled by limiting the services that doctors and hospitals offer” and in Business English, “in the US, a system for providing health services that uses HMOs (= Health Maintenance Organizations: groups that provide health care to people who pay to join them)”. This is in keeping with the definition of the Honeysuckle Health’s ‘value-based care contracting’ and its ‘benefits’ as detailed in its ACCC application.

https://www.accc.gov.au/system/files/public-registers/documents/Further%20amended%20application%20for%20authorisation%20-%2006.05.21%20-%20PR%20VERSION%20-%20AA1000542%20Honeysuckle%20Health%20nib.pdf

Stephen Milgate, Director of the Australian Doctors’ Federation, is clear that “The aim here is to have a workforce of health fund contracted doctors. There is no guarantee that any so-called cost savings from these schemes will be passed on to health fund members in the form of reduced premiums. In the US, the failure of managed care is simply that the “manager” who squeezes the providers, takes the savings into their own bottom line as a reward for squeezing.”

Milgate indicates “Managed care and transparency cannot coexist, since managed care is built around commercial in-confidence contracts that disguise any restrictions in treatment… Furthermore, this model puts conditions on the modality of treatment prior to examination. Clinical medicine is now turned on its head. However disguised, the doctor is offering a solution to the patient based on health insurance arrangements and health insurance-dictated protocols. At first these protocols will be somewhat loose and flexible. In time, once the doctors have been locked in, they are likely to tighten and become more direct and demanding.”

https://insightplus.mja.com.au/2020/45/humanitarian-objectives-not-compatible-with-managed-care/

As detailed in the HH ACCC application, provider (clinician) performance will be measured and benchmarked as part of data analytics. Provider quality might be measured based on rate of hospital acquired complication, length of stay, requirement of intensive care. It seems clear that measures of quality doctoring, which will also attract higher payment, will be the absence of patient complications or need for intensive support, and the quickest time to discharge. It is fair to presume that this actually has nothing to do with genuine patient needs but would quickly lead to the de-prioritisation of care of patients with complex needs, comorbidities, risk factors increasing adverse outcomes etc as has been observed internationally.

We suggest to the ACCC that HH’s use of the term ‘care’ here is a euphemism, as it is for ‘partnership’.

Milgate asks “Here’s an important question. If the doctor is to be clinically independent from the health fund, why is there any reason whatsoever for the doctor to sign a contract, agreement, understanding or clinical partnership with the health fund?

Answer? Because the health fund needs to have financial control over the doctor’s activities to make the model (managed care) work. A contract ensures that both parties have legal obligations to each other, and the health fund can use the contract or threat of cancellation to enforce arrangements.”

Milgate notes “The importance of the independence of doctors from third-party control is reinforced in the protections given to the public by the anticonscription provisions of the Australian Constitution. Australian doctors need to remain the patient’s doctor, not the health fund doctor.” All potential patients need to understand that treatment by an insurer’s Provider will be the choice of treatment options from what the insurer deems reasonable, not necessarily that which best practice medicine might consider.

https://insightplus.mja.com.au/2020/45/humanitarian-objectives-not-compatible-with-managed-care/

We are concerned that entry of US style managed care into Australia will further damage an already dysfunctional mental health care system.

NAPP, the National Association of Practicing Psychiatrists, has produced a position statement re the HH application to the ACCC, indicating that “Patients suffering from psychiatric illness will be particularly vulnerable with loss of

effective psychiatric treatment including psychotherapy, and access to adequate hospital treatment. These changes are not in keeping with the intended humanisation of the mental health system as recommended from the Victorian Royal Commission into Mental Health."

https://napp.org.au/2021/05/napp-statement-re-honeysuckle-health-application/

In 2019, the RANZCP Victorian Faculty of Psychotherapy submission to the Royal Commission into Victoria's Mental Health System detailing the "The need to align the VPMHS (Victorian Psychiatric and Mental Health System) with contemporary international human rights". The issues we identified as existing within the Victorian mental health system parallel those reported within the managed care US sector. Introducing the managed care system into Australia will contribute to the decline of the health care system and is not in keeping with the recommendations emerging from the Royal Commission, which are intended to rehumanise a broken system.

Further, we would suggest that a managed care system is not in keeping with the Australian Charter of Healthcare Rights, that all Australians have a "right to health care", and the "right to receive safe and high quality care" (Australian Commission on Safety and Quality in Health Care, 2008).

http://rcvmhs.archive.royalcommission.vic.gov.au/RANZCP_01.pdf

We noted in the Royal Commission submission that "Respecting the autonomy of persons with mental disabilities necessitates 'our own emancipation from institutional thinking and practice'' (Cosgrove et al 2019 referencing Mezzina et al, 2019)." This includes emancipation from nonclinical third party intrusion into the patient-doctor relationship, such that it can no longer be said that the clinician is acting transparently and independently for the patient and with their needs forefront in mind.

In the RC submission, we documented a precedent case in the USA *David Witt, et. al. v.* Managed Care Insurer *United Behavioral Health (UBH)* (Wit v United Behavioural Health, 2017) whereby "the United States District Court for the Northern District of California found that UBH "illegally denied mental health and substance use coverage" when it "used internally developed medical necessity guidelines that comprehensively fell short of accepted standards of care".

The Judge wrote "... the Court finds, by a preponderance of the evidence, that in every version of the Guidelines in the class period, and at every level of care that is at issue in this case, there is an excessive emphasis on addressing acute symptoms and stabilizing crises while ignoring the effective treatment of members' underlying conditions", indicating the scope of treatment provided did not meet that "consistent with generally accepted standards of care". "...the court recognized that mental and substance use disorders are chronic illnesses and rejected the insurer's practice of treating patients only for acute symptoms" (American Psychiatric Association, Psychiatric News Alert, 2019).

The issues with managed care, or 'value-based care contracting', arriving in Australia are clear and we strongly voice our objection.

Sincerely,

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