



Private Healthcare Australia
Better Cover. Better Access. Better Care.



Response to the Pathways for Applications to the Prostheses List

October 2022

Contact:

Ben Harris – Director Policy and Research

0418 110 863

ben.harris@pha.org.au

About Private Healthcare Australia

Private Healthcare Australia (PHA) is the Australian private health insurance industry's peak representative body. We have over 20 registered health funds throughout Australia as members and collectively represent 98% of people covered by private health insurance. PHA member funds provide healthcare benefits for more than 14 million Australians.

Response

Private Healthcare Australia (PHA) welcomes the government's focus on integrity, sound administration, and where allowed for by the Memorandum of Understanding between the previous Minister for Health and the MTAA, consumer value and safety.

PHA broadly supports the proposed pathways for applications to the Prostheses List, with one vital caveat – payors must have scrutiny for all applications.

The importance of payor scrutiny

The report from Adelaide Health Technology Assessment (AHTA) notes "Further discussion involving a broad range of stakeholders resulted in a consensus that some form of scrutiny by payors (and other interested parties, such as the group representing the private hospitals) should be incorporated."

The department's response proposes removing any payor scrutiny from tier one applications, which are likely to amount to more than half of the current applications. This is inconsistent with the AHTA recommendations and is counter to good governance.

It is unacceptable to private health insurers, representing 14 million Australians, to remove payor scrutiny from the process. Removing payor scrutiny would:

- run counter to the government's stated goals of transparency,
- not meet the principles of natural justice and regulatory theory,
- make the process more prone to errors (both large and small),
- removes a key integrity measure,
- makes the scheme vulnerable to future changes in resourcing,
- increase low-value care,
- put upward pressure on private health insurance premiums, and
- increase expenditure for the Australian Government through the PHI Rebate.

Currently, payors have some level of scrutiny through the Prostheses List Advisory Committee (PLAC). While a flawed and rushed process, PLAC allows payors to have eyes on each application prior to approval by the Minister's delegate. PLAC only provides advice for the delegate's consideration; it does not direct the delegate.

The government has stated that one objective of Prostheses List reform is to improve transparency and integrity. Removing scrutiny for payors for hundreds of applications each year fails to address this objective.

It is important to note that the legislation requires consumers (through private health insurers) to pay for items on the Prostheses List through force of law. There is no discretion, and no judgement allowed as to whether the device is safe, effective or provides value to the consumer.

Regulatory theory requires that when the burden is significant, natural justice requires the affected party is involved in the application of the rules (for example, no taxation without representation). As the Prostheses List is divorced from market forces, the list operates more as a tax or levy than a mechanism allowing the market to function. Thus, payors must have some level of scrutiny in the application process. The department is quick to quote natural justice principles when considering removing items from the list; similar courtesy should be afforded to consumers and the payors representing them.

This scrutiny should be advisory only; it will be up to the Minister or his delegate to make the final decision in the best interests of the community.

Prior to 2019, the Prostheses List amassed over 100 errors which were (and in many cases, still are) detrimental to consumers. These are predominantly items in the wrong category and thus attracting a higher rebate. There are also many items used in a manner that is fundamentally different to the uses proposed in the application. Only a handful of these items have been removed or amended, despite the errors being pointed out to the department.

Since 2019, the department has done an outstanding job increasing the scrutiny on applications, and thus more than 40% of applications are currently amended or rejected. Nearly every error currently spotted by the department is in the sponsors' favour, thus against the interests of consumers.

Despite this increased scrutiny from the department, PHA still regularly pick up issues at PLAC the department have missed. In each meeting, PHA have noted a small number of items that are in the wrong category or need some other amendment. In each case, the error has been in favour of the sponsor and against the interests of the consumer.

In one instance, the PHA representative on PLAC noticed an amendment application that may have been misleading and deceptive; with the possible intent of adding a high-cost item to the Prostheses List which had already been rejected by the Medical Services Advisory Committee. This was an extreme and isolated example but had the potential to cost consumers several million dollars per annum had it not be detected through external scrutiny.

Further, the lack of transparency and scrutiny from payors means that the system integrity is at risk. While in the Australian context the risks of overt corruption and malfeasance from public officials is currently very low, the integrity issues of department officials making multimillion dollar decisions without external scrutiny are existent. Ensuring payor scrutiny is maintained provides a level of protection for departmental staff and improves public confidence.

A more realistic threat is any issue in resourcing the department in undertaking assessments. With a small team undertaking this task, there is a significant risk of knowledge and judgement being concentrated in one or two people. If a key person leaves their role, then a large proportion of the institutional knowledge goes with them. This leaves a significant risk that can be partially managed with external scrutiny.

Regulatory theory also suggests that corporate that rely on investing in government intervention rather than the market know these weaknesses and can exploit them. The typical playbook for

industry is to argue to reduce external scrutiny measures as they are not necessary with government controls, then complain about the government's cost recovery provisions, get a reduction in fees, which leads the government to reduce resources, reducing scrutiny and thus increasing financial risks for consumers. The Trump administration provides a master class in this type of rent-seeking from multinational companies.

Relying on the goodwill of multinational companies to do the right thing can only be a temporary approach. The interest of consumers can be permanently protected by improving transparency and scrutiny.

Based on the experience of errors on the Prostheses List prior to the department improving scrutiny from around 2019, PHA estimates that removing payor scrutiny will add approximately \$5-10 million of inappropriate costs per annum. There is also the risk of a major error adding significantly more to this estimate. The substantial delays in removing inappropriate listings suggest that this figure will be cumulative, adding significantly to consumer costs over time.

As the Australian Government subsidises premiums through the Private Health Insurance Rebate, the Budget will also be affected by the likely increase in costs.

Added inappropriate costs increases low-value care and increases premiums for consumers. There is no reason to remove payor scrutiny from the Prostheses List application process.

The proposed alternate mechanisms – including post-listing reviews – close the door after the horse has bolted. Given the long delays in data collection, followed by long delays in addressing issues, consumers are currently paying millions of dollars each year for issues that were identified several years ago. These post-listing mechanisms are important but are not a suitable alternative to up front scrutiny.

Response to consultation questions

Do you have any significant concerns with the proposed pathways for assessing Prostheses List applications? If you do, please advise how they could be improved.

The abbreviated pathway must involve payor scrutiny as outlined above.

The listing process must also ensure that medical devices are assessed for their proposed use. An item being suitable for one use does not imply it is efficient or efficacious for all uses. PHA recommends conditions on listing where the benefit is automatically payable only for the MBS items (or ICD codes) for which it has been assessed, or where a medical practitioner certifies that the use of the product is reasonable and necessary. This will help ensure that medical devices are not used outside the purposes for which they are assessed, which may constitute low value care.

Are the terms in the glossary clearly defined? If not, please advise which terms require further clarification.

Nil comment. The terms are clear and concise.

Have all the characteristics been captured in Table 2 (comparison table) to demonstrate interchangeability and identify differences between the subject device and the proposed comparator? If not, what additional characteristics are required?

The table does not require a sponsor to declare the device is interchangeable. This would be a simple amendment with a yes/no answer to assist the department determine a key issue for the pathway.

As outlined above, the form should require all MBS items that the sponsor wishes the device to be assessed against. This will help alleviate the risk of low-value care and additional consumer costs.

Cost recovery of Prostheses List applications

Cost recovery arrangements should be consistent across government.