

Notifiable circumstances in Private Health Insurance

– the obligation to advise



INTRODUCTION

When the Private Health Insurance (PHI) Act was passed in 2007 it included the establishment of the Appointed Actuary role. However, the requirements that would make the Appointed Actuary's role a continuous responsibility to monitor and advise (rather than being limited to a specific list of compliance tasks) were left to regulations.

The approach taken by the PHI regulator (PHIAC) was to create the Notifiable Circumstance regime. In doing this, PHIAC consulted the Health Practice Committee, and drew on the experience of its members both in health insurance and in other practice areas including superannuation. Under this regime a PHI Insurer must notify its Appointed Actuary of any circumstance which may be significant for its business, and ask the Appointed Actuary whether he/she considers that actuarial advice is necessary.

What flows from this requirement is a comprehensive framework which ensures that a PHI insurer should always receive timely actuarial advice when warranted. This framework differs from other insurance regimes and it has been in operation for five years. In this article I will explain how the regime works, the legal obligations it places on insurers, and what I see as professional implications for PHI Appointed Actuaries.



NOTIFIABLE CIRCUMSTANCES

The secondary legislation governing the Appointed Actuary role is PHIAC's Private Health Insurance (Insurer Obligations) Rules, made under the Private Health Insurance Act. These include the Notifiable Circumstance regime and process.

Notifiable circumstances are most definitely not the same as "adverse events" (and the meaning of the term should not be confused with its usage in some other regulated industries – e.g. some healthcare regimes – where a "notifiable event" refers specifically to a regulatory breach). In most cases they would be events, decisions or actions intended to have a positive effect on an insurer, such as the annual premium rate review or the launch of a new distribution channel or product. They are "notifiable" to the Appointed Actuary, not the regulator.

They include anything which would have a significant effect on the conduct of the Health Benefits Fund business. The list set out in the (Insurer Obligation) Rules includes several specific circumstances but also a provision enabling the Appointed Actuary to declare a Notifiable Circumstance for things not included elsewhere. The list is set out in Rule 1(3) of Schedule 2 as:

- (a) proposed changes to the rates of premiums charged under a product of a health benefits fund conducted by the private health insurer;
- (b) proposed changes to the benefits provided under a product of a health benefits fund conducted by the insurer;
- (c) significant redevelopment or revision of the strategic or business plans of the insurer;
- (d) significant redevelopment or revision of the strategic or business plans of a health benefits fund conducted by the insurer;
- (e) development of a new product of a health benefits fund conducted by the insurer;
- (f) major revision of an existing product of a health benefits fund conducted by the insurer;
- (g) significant changes to the investment policies of the insurer;
- (h) significant redetermination of the risk profile of the insurer;
- (i) development of, or changes to, a capital management plan, being a plan dealing with the management of capital of the insurer or a health benefits fund conducted by the insurer;
- (j) any other event that the insurer reasonably expects to have a significant impact on the conduct of the business of a health benefits fund of the insurer;
- (k) significant business diversification activity;
- (l) any event specified in writing to the insurer from the actuary.

This list includes not only the obvious items such as premiums and policy benefits, but also items fundamental to the management of the business such as revisions of the strategic plans, and any other event with "a significant impact on the conduct of the business", such as the creation of a new distribution channel or expansion to a new territory.

NOTIFIABLE CIRCUMSTANCE PROCEDURE

The Notifiable Circumstances procedure set out in the Rules is designed to ensure that when a company needs advice it gets it, regardless of who first recognised the need. The procedure gives primary responsibility to the insurer for notification (although in some cases it rests with the Appointed Actuary).

However the procedure then places the onus on the Appointed Actuary to make the decision as to whether advice is needed; if the decision is that advice is needed, the onus is on the Appointed Actuary to state this in writing to the insurer.

The Notifiable Circumstances procedure is designed to ensure that when a company needs advice it gets it – the procedure generally gives primary responsibility to the insurer for notification. However the procedure then places the onus on the Appointed Actuary to make the decision as to whether advice is needed.

There are consequences for an insurer which does not request this advice within 21 days of the Appointed Actuary stating in writing that it should, as the actuary must then report this situation to PHIAC.

To be comprehensive the process consists of several steps which may on a casual look appear somewhat bureaucratic. However in reality these are describing (and will usually first happen as) a conversation between insurer and actuary, so many of the steps become combined into a single interchange.

In practice each Appointed Actuary needs to establish with the insurer a process for dealing with notifiable circumstances. To be effective these will vary with the nature of the relationships and the company. However, regardless of the particular formal processes set up, the common element is that from the outset the Appointed Actuary needs to be in dialogue with Board members and senior management about:

- what are notifiable circumstances,
- how can they be recognised, and
- what are the Appointed Actuary's requirements when they arise.

Although it is after the event, it is useful to document in the Financial Condition Report the Notifiable Circumstances that arose in the year. This has now become a formal requirement under PS 600. If any circumstances are found to have been omitted from this list, the control cycle can be strengthened for the future.

PRACTICAL ADVICE WHENEVER IT'S NEEDED – AVOIDING THE "COMPLIANCE TASK" MENTALITY

The underlying requirement is that the insurer receives actuarial advice when the business needs it. This is ultimately a commercial judgement. Although there is significant power in the hands of the Appointed Actuary (through PHIAC) to insist on compliance, if "Compliance" becomes the justification for the insurer then something has failed.

Not every Notifiable Circumstance requires actuarial advice. Minor product changes for example may not justify this, and the Appointed Actuary has the power to say so in any particular case. Most have found that applying this sensibly enhances the respect for the role.

As well as the list of specific events there are two items in the list of Notifiable Circumstances that require the actuary and insurer to be continuously aware of events and the potential for useful actuarial advice:

- (j) any other event that the insurer reasonably expects to have a significant impact on the conduct of the business of a health benefits fund of the insurer; and
- (l) any event specified in writing to the insurer from the actuary.

Both of these are very broad requirements, leaving no excuses for either party to have failed to involve the Appointed Actuary in any key business decision where this would be beneficial for the insurance business.

The first requires the insurer to bring the Appointed Actuary into the loop when significant changes are expected, in time for the actuarial advice to be effective. For this to work in practice, the Appointed Actuary needs to have established good communication channels with both insurer management and board; these notifications best happen as a genuine recognition that the company needs advice instead of as a formality.

The second requires the Appointed Actuary to be continuously monitoring both the business of the insurer and the environment within which it operates. This is not a "general awareness" issue – the onus is on the Appointed Actuary to always be thinking through the specific implications for the insurer and specifying when the insurer needs to

ask for actuarial advice. At that point the insurer has very little choice but to ask for it. This also places the onus on the actuary to exercise sound judgement by not:

- staying silent when advice should have been provided; and
- insisting on providing advice when not justified.

CONCLUSION

Appointed Actuaries in PHI have been given the opportunity to be truly the "trusted advisor" for PHI insurers, avoiding the "Compliance work" epithet which now often seems to diminish the role in life or general insurance.

The more professionally, commercially, and courteously they exercise the responsibilities, powers and discretions given to them under the Notifiable Circumstances regime, the more effective will be the PHI industry, and the greater the respect for the actuarial profession.



Stuart Rodger is experienced as an Appointed Actuary in both health and life insurance, and is a Partner in Deloitte. He was Convenor of the Health Practice Committee when PHIAC consulted the Actuaries Institute on the design of the Notifiable Circumstance regime.

