



Comments on Issues Paper – Review of Insurance Contract Law

13 July 2018

Accuro

Accuro Health Insurance was set up in 1971 as the Hospital Services Welfare Society, which was owned, operated and funded as an entity of the Hospital Boards Association but with its own board appointed by the Department of Health, the Hospital Boards Association and the Combined Hospital Unions. In 1991 the board established HSWS as an independent society under the ownership of its members. Today it operates as a private health insurer trading under the name Accuro Health Insurance. As a health insurer grounded in the public health sector Accuro is strongly committed to supporting the effectiveness of publicly funded health services and better health outcomes for all New Zealanders.

Accuro is a member of the Health Funds Association of New Zealand Inc. (HFANZ), the industry body representing New Zealand's health insurance sector.

Introductory comment

Accuro strongly supports the intent to update insurance law so it supports and enables a well-functioning insurance industry. Many of the negative perceptions commonly held of insurers can be tracked back to the out-dated legal underpinnings of insurance contracts. Rather than enabling and assuring a well-functioning insurance industry, out-dated aspects of insurance law are disabling.

The clearest example of this in health insurance is the law around duty of disclosure. Consumers commonly anticipate their claim will be declined on some obscure point of law. This fear manifests as consumer aversion to considering taking out health insurance. This aversion handicaps consumers, the industry and the economy. Health insurers can do quite a bit to overcome the problem by actively rejecting available legal remedy to avoid claims. But until the law aligns better with fair and reasonable insurer practice, the handicap to consumers the industry and the economy will remain.

Accuro endorses the responses made by HFANZ and has restricted comments in this paper to issues around disclosure.

Regarding disclosure obligations and remedies for non-disclosure

ACCURO's experience is that while most consumers have some understanding of the need to provide accurate information, very few are aware of the potential legal consequences of non-disclosure.

Possibly more significant in respect of health insurance is the fact most consumers don't have

available to them all the information about their own health they require to fulfil their legal duty of disclosure.

As well as the usual attempts to communicate at point of sale the importance of disclosure and by making application forms as simple as possible, ACCURO attempts to mitigate disclosure problems in two more fundamental ways.

1. ACCURO offers all consumers the option of providing its underwriters with their full medical record as an alternative to completing written questions on an application form. When this option is chosen ACCURO assumes full responsibility for the completeness and accuracy of the information provided. This requires much more work for our underwriters but ACCURO considers this is the most effective way of ensuring both parties are fully informed as to the nature of the risk being insured and the terms being offered. To date relatively few consumers choose this option. This seems to be due mostly to the essential problem that health consumers don't have real control over access to their own medical records.

This issue lies outside the scope of insurance law reform but will remain as a barrier to a well-functioning health insurance industry so long as medical records remain under the effective control of health practitioners, not the person whose health they document.

2. ACCURO has developed on-line access to an automated health insurance underwriting tool. This is becoming an increasingly popular choice for consumers as it guides consumers through the disclosure process, only asks questions that are relevant for each individual and enquires in more depth where that is required.

The other way ACCURO, in common we believe with all other health insurers, mitigates this problem is by approving claims regardless of evident non-disclosure issues. Except when it is apparent the non-disclosure issue is both relevant to the claim and should have been known by an ordinary consumer at the time the application for insurance was made.

General comment on disclosure:

The non-disclosure issue is a serious problem for consumers and the health insurance industry. ACCURO considers the current law around disclosure has a chilling effect on the industry. ACCURO further considers that in addition to out-dated law in this regard, a practical problem is that consumers do not have sufficient control over access to their medical records to enable them and their health insurer to engage in the fully informed and open communication required to establish a fair and robust contract.

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