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QUARTERLY BULLETIN NO 19
(1 April to 30 June 2001)

RELATIONSHIP BREAKDOWN

This bulletin will concentrate on only one issue. The often intractable question of what role health fund management can have in resolving disputes over ownership and control of a family membership in the event of a relationship breakdown.

This issue has always been a problem for health fund management and unfortunately although the number of complaints regarding relationship breakdown is not large, these are very often quite bitter. This office recently advised one fund, in a semi formal way, how it might modify its rules and administrative practices to meet the fund's obligations and to protect the rights of all participants in a family membership. It was necessary for the office to look at the whole question and not just respond to an individual issue affecting a particular member. A broad outline was given to the recent AHIA general meeting and as we have been asked since, to provide transcripts of the talk (something that there never was) it was thought appropriate to detail the advice in this bulletin.

Basically we addressed the question in four areas.

1. **Who is the member and what rights do they have?**
2. **Who should have authority to make claims on the membership?**
3. **Who can authorise changes to the membership?**
4. **What information is it reasonable to pass between the parties in dispute?**

Who is the member and what rights do they have?

Membership rules in some funds are steeped in antiquity. In the past it was common for the primary breadwinner, the male of the species to be the member, and they were responsible for the membership. There is now a less prescriptive view and whoever signs themselves as the member on the initial application is deemed to be the member in perpetuity. Flowing from this they ascribe all authority to this initial member, irrespective of who pays the account.

Fortunately common law has evolved a little quicker than some health fund practice in this area. Although we are not aware of the health fund membership issue being tested in the courts, it is reasonable to say that in most other areas of social law, the courts and legislators have adopted a position where there are rights in common to both

spouses and even in some instances to any adult person affected. It is from this general principle that this office has developed guidelines to assist.

Who should have authority to claim on the membership?

Health funds generally allow without question for claims to be submitted by either spouse in a membership. Quite a number of funds do not question even when a dependent adult raises a claim, particularly now with the advent of electronic processing of claims from a provider. Indeed it is almost impossible to verify the claimant. Time and circumstance dictate that funds do not routinely check the claimant signature against any verifiable document. Yet when a dispute arises with the breakdown of a relationship and the fund is drawn into the dispute, some funds try to dictate that only the "member" may lodge claims. This is particularly the case when one or other party has access to the dependents.

This is not a justifiable position for a fund to adopt, even though they may have rules to back their stance. Funds should have documented administrative practices that allow for either party to submit claims if they are still legally part of the membership. This is particularly important where a court has made orders affecting either the maintenance of health insurance for the whole family and/or where joint custody of dependents of the relationship has been provided for.

Who can authorise changes to the membership?

As a general principle, any adult person within the family membership should be allowed to make changes to the membership as it affects themselves. Change of name, address, or even remove themselves from the membership.

That is the simple part, but the more difficult case arises when one party in dispute unilaterally removes another party or parties from the membership. Normally this would be the estranged spouse and sometimes the dependents.

What are the health fund obligations with respect to this?

They should endeavor to advise the removed party of the act of the other party. Of course this is not usually possible as it often occurs when the only address the fund maintains is that from which the estranged partner has departed. None-the-less as a matter of note, it should be done.

In the event the removed party discovers at a later date they are not covered, and take immediate steps, they should be allowed re-instatement without additional waiting periods.

The question also often arises as to who can have the dependent children on a membership, particularly when the court may have allowed joint custody. The wishes of all parties should be considered. If the departing party wishes to begin their own membership and have the dependent children on the new membership, outside the wishes of the other estranged party, it should be allowed. There should be nothing to preclude both memberships having the dependent children attached. They would be paying two full family (or sole parent) memberships. It would be up to the fund to have

such controls in place to obviate the possibility of individual claims being paid against both memberships.

What information is it reasonable to pass between the disputing parties?

Unfortunately, the circumstances which give rise to disputes in this area are invariably unpleasant. The health fund is often placed in a situation where it may be unable to satisfy the determined wishes of all parties to the membership.

All too often, the “member” (“I am paying the contributions, therefore you will do as I ask”) demands access to all the records of the membership pertaining to claims paid against the membership. This is the difficult one. Quite often also, the estranged spouse has given instructions for this not to happen, sometimes because it would identify a new address which they do not want the other party to know. Whatever the reason for the parties disagreeing on this issue, particularly in light of the up-coming privacy legislation, absolute caution is required and absolute probity.

In the event the fund is aware of an acrimonious relationship breakdown, they should endeavor to obtain both parties approval for the transfer of any particular information. If it is not forthcoming, only that data which relates to the particular party’s transactions should be divulged.

CONCLUSION

It is in the interest of funds and their members to have in place, not only approved rules under the National Health Act, but also formally documented administrative procedures to deal with disputed relationship breakdown.

These administrative procedures should be clearly defined and made available to any member on request. They should be entirely non prejudicial and could even detail if necessary the process a fund will use to determine an equitable distribution of “family” annual limits.

Having investigated this issue in quite some depth, this office would be happy to assist any fund that felt they had a need to vary their existing practice and implement new rules and administrative procedures.

STOP PRESS

The Ombudsman has redesigned and launched its updated website. Check out PHIO's new and improved website at: http://www.phio.org.au.

Complaints (Problems, Grievances & Disputes) by health fund
1 April 2001 to 30 June 2001

Name of Fund	Total number of complaints (1)	% of total complaints	Total number of disputes (2)	% of total disputes	Health fund Market share (3)
ACA Health Benefits Fund	0	0.0	0	0.0	0.1
AMA Health Fund Limited	0	0.0	0	0.0	0.1
Australian Health Management Group Limited	19	3.2	7	4.4	2.6
Australian Unity Health Limited	33	5.6	12	7.6	2.8
AXA Australia Health Insurance	69	11.7	27	17.1	10.3
CBHS Friendly Society Limited	3	0.5	0	0.0	0.9
Cessnock District Health Benefits Fund	0	0.0	0	0.0	0.0
Credicare Health Fund	1	0.2	0	0.0	0.5
Defence Health Benefits Society	8	1.4	3	1.9	1.1
Federation Health	1	0.2	1	0.6	0.2
Geelong Medical & Hospital Benefits Assoc. Ltd.	6	1.0	2	1.3	1.0
Goldfields Medical Fund (Inc.)	4	0.7	0	0.0	0.5
Grand United Corporate Health Limited	4	0.7	1	0.6	0.2
Grand United Health Fund Pty Ltd	4	0.7	1	0.6	0.5
Health Care Insurance Limited	0	0.0	0	0.0	0.1
Health Insurance Fund of W.A.	3	0.5	0	0.0	0.4
Health-Partners Inc.	0	0.0	0	0.0	0.5
Healthguard Health Benefits Fund Limited	0	0.0	0	0.0	0.1
HBF Health Funds Inc.	23	3.9	5	3.2	8.9
Hospitals Contribution Fund of Australia Limited	27	4.6	9	5.7	7.8
IOOF Health Services Limited	2	0.3	1	0.6	0.2
I.O.R. Australia Pty Limited	10	1.7	5	3.2	0.8
Latrobe Health Services Inc.	2	0.3	0	0.0	0.5
Lysaght Hospital and Medical Club	1	0.2	1	0.6	0.2
Manchester Unity Friendly Society In N.S.W.	21	3.6	5	3.2	1.3
Medibank Private Limited	185	31.3	40	25.3	29.7
Medical Benefits Fund of Australia Limited	113	19.1	20	12.7	17.3
Mildura District Hospital Fund Limited	0	0.0	0	0.0	0.3
Navy Health Limited	2	0.3	0	0.0	0.3
N.I.B. Health Funds Limited	37	6.3	15	9.5	5.4
NRMA Health Pty. Limited	5	0.8	0	0.0	1.5
N.S.W. Teachers' Federation Health Society	3	0.5	1	0.6	1.4
Phoenix Welfare Association Limited	0	0.0	0	0.0	0.1
Queensland Country Health Limited	0	0.0	0	0.0	0.2
Railway & Transport Emp'ees Friendly Soc.	0	0.0	0	0.0	0.3
Reserve Bank Health Society	0	0.0	0	0.0	0.1
SA Police Employees' Health Fund Inc.	1	0.2	0	0.0	0.1
St Luke's Medical & Hospital Benefits Ass. Ltd.	0	0.0	0	0.0	0.4
Transition Benefits Fund Pty Limited	0	0.0	0	0.0	0.1
Queensland Teachers' Union Health Fund Limited	0	0.0	0	0.0	0.4
Transport Friendly Society Limited	0	0.0	0	0.0	0.1
United Ancient Order of Druids Victoria	0	0.0	0	0.0	0.1
United Ancient Order of Druids G/L NSW	0	0.0	0	0.0	0.0
Western District Health Fund Ltd	4	0.7	2	1.3	0.7
Total for Registered Funds	**591**	**100.0**	**158**	**100**	**100.0**

1 Complaints = problems, grievances and disputes
2 Disputes require intervention by the Ombudsman and the fund
3 Proportion of people covered by health fund as at 30 June 2000 as reported in the PHIAC Annual Report.