THE HEALTH INSURANCE AUTHORITY

Towards Better Regulation

A response to the consultation document published by the Department of the Taoiseach

Prepared by The Health Insurance Authority

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Introduction

The Health Insurance Authority ("the Authority") welcomes the opportunity to respond to the consultation document entitled *Towards Better Regulation*, issued by the Department of the Taoiseach. Although the Authority has only been in operation for a little over a year, matters covered in the document are of great relevance to it, as an independent sectoral regulator.

This submission deals with some issues in a general context, but in many cases uses examples from the health insurance market and the functions of the Authority therein. Only issues from the consultation document that are of relevance to the Authority have been addressed in this submission.

Background of The Health Insurance Authority

The Authority was established by the Minister for Health and Children on 1 February 2001, in accordance with the terms of the Health Insurance Act, 1994, as amended by the Health Insurance (Amendment) Act, 2001. The Authority is an independent regulatory body, required to make regular reports to the Minister for Health and Children, who in turn will lay these reports before the Houses of the Oireachtas.

The Authority's principal functions, as provided for in the Acts, include:

- The provision of advice to the Minister as to whether or not any risk equalisation scheme should be implemented, the evaluation and analysis of returns made to it under any risk equalisation scheme established, the management and administration of any risk equalisation schemes prescribed under the Acts and the establishment and administration of any risk equalisation fund necessitated by such a scheme and the preparation of reports to the Minister evaluating the operation of any risk equalisation scheme;
- The maintenance of "The Register of Health Benefit Undertakings";
- The provision of advice to the Minister, either on his/her request or on the Authority's own initiative on matters relating to the Minister's functions under the Acts, the Authority's own functions or health insurance generally
- The monitoring of the operation of the Acts, the carrying on of health insurance business and developments in relation to health insurance generally.

Consumer Welfare

a) How can consumers be given a broader choice of suppliers of goods and services?
b) How can consumers be better informed as to their rights and given the necessary information to make choices with regard to products and services?
c) How can consumer interests be more fully incorporated into the governance and consultation processes? For example, is there a means of reflecting consumer interests more effectively within Social Partnership?
e) Are there areas where more regulation is necessary to protect and promote consumer interests?

Broader Choice of Suppliers

The focus of a regulator is normally on the common good and/or the best overall interests of consumers. These interests are often likely to be served by providing consumers with a broader choice of suppliers of goods and services. However increasing the number of suppliers should not be considered an end in itself. The regulator should, in consultation with stakeholders and subject both to public policy objectives set down in legislation and to the statutory framework within which the regulator operates, identify the most effective ways of promoting the interests of the common good and/or of consumers. This process should clarify whether any impediments to the growth of the number of suppliers that exist in the market are unnecessary or disproportionately harmful. If such impediments are found the regulator should look at how they could be removed. The issues of whether the impediments are necessary and proportionate and of how impediments could best be removed should be looked at in the context of the common good and the interests of consumers, which in turn would refer to defined public policy objectives.

Consumer Information

Suppliers should provide consumer information about choice and consumer rights at the point of sale. It is at the point of sale that consumers make their most significant decision and thus it is at the point of sale that they have the greatest need for full information. While regulators or other interested bodies could provide consumer information, there is no guarantee that consumers will contact any of these bodies. The stakeholders in the industry that, it can be held with confidence, consumers will be in contact with around the point of sale are the suppliers from which they are purchasing. Therefore the only way that it can be assured that consumers will receive the appropriate information at the appropriate time is by ensuring that suppliers provide it at the point of sale.

While it is necessary that consumer information be provided at point of sale, it may not be sufficient. Where consumers have entered into contracts with suppliers, the suppliers should provide their customers with information during the term of the contract. Consumers should be informed whenever there is a change to their rights under the contract either due to a change in legislation, a change in the product

provided or a change to the structure of the provider. There are also circumstances in which suppliers should provide customers with information throughout the duration of the contract even if there has been no significant change to consumers' rights. Such circumstances might include instances in which consumers were indebted to suppliers or suppliers were holding assets that belong to consumers. In these circumstances it would be appropriate for suppliers to provide consumers with regular statements.

The format in which the information is provided is also of paramount importance. In order for the information to be useful it must be clear, accurate and not misleading. It must include details of both consumers' rights and details of the product being sold in order to facilitate consumers in choosing between suppliers. It would also be helpful if suppliers had an agreed format for providing this information, as this would further facilitate consumers in comparing the information provided by different suppliers.

The role of the regulator in all of this would be to ensure that the information provided is clear, accurate and not misleading, that it is provided at the appropriate time(s) and that it is in a format that consumers would find useful. This may or may not require formal regulation.

Consultation Processes / Governance

In order to ensure that consumer interests are incorporated, *inter alia*, into the governance of the Authority, the Office of the Director of Consumer Affairs was asked to nominate a Member of the Authority. Furthermore, the practice in the Authority is to involve consumer interest organisations and the public in consultation processes whenever consumers have an interest in the subject of the process. Consumer organisations are normally invited to participate and advertisements are placed in the national papers inviting contributions from the public. Also, the Authority believes that the consultation process itself should be transparent and open to public review. To this end the Authority is of the view that submissions made in relation to consultation processes should normally be publicly available.

More Regulation

The issues affecting consumers and the common good are constantly subject to change, as is the legislative framework in which markets operate. There is thus an onus upon regulators to constantly review the need for changes to regulations and to review how regulations could best be used. The Authority has recently completed a consultation process and is currently reviewing how the anticipated risk equalisation regulations might operate so as to serve the best overall interests of consumers, while recognising the need to facilitate competition.

As well as reacting to changes in regulations, regulators have a responsibility to be proactive. In the case of The Health Insurance Authority this responsibility is statutory in that the Authority has a responsibility *"to advise the Minister either at his or her request or on its own initiative on matters relating to the functions of the Minister under this Act* [The Health Insurance Act 1994, as amended by the Health Insurance Act 2001]*, the functions of the Authority and health insurance generally."* It is the Authority's view that it is appropriate that regulators have such responsibilities.

Competitiveness

a) Are there particular regulations that are unduly restrictive, either in establishing new companies/businesses or in everyday operational terms, by imposing unnecessary or unduly costly compliance burdens?

e) Does the regulatory framework foster a culture of innovation and encourage enterprise, both small and large, to develop new ideas and adapt to changing economic circumstances?

It is important that regulations should be necessary and proportionate. In some cases, regulations do impose some burdens and/or costs, but the benefits of these regulations, in terms of the common good, should outweigh, or at least be in proportion to, the costs. Administrative burdens should be equal or in proportion to the size of the participants in that segment of the market.

Regulations should not be so restrictive as to impede innovation unless they are shown to be necessary and the benefits from the regulations are shown to be proportionate to the restrictions. In many cases, regulations specify certain criteria with which firms must comply, but they are open to compete on other grounds, which allows for innovation. Innovation often flows from regulations that facilitate competition, as competition encourages innovation.

In the private health insurance market, legislation specifies that companies offering health insurance contracts must operate on the basis of community rating, open enrolment and lifetime cover, and that all contracts must provide a minimum level of benefits. These regulations fulfil public policy objectives, which aim to promote the best interests of private health insurance consumers.

These regulations are deemed to be necessary and proportionate. The benefits accrue to the common good. In terms of the costs of these regulations, they mean that the actuarial calculations to set premium rates must allow for the principles of community rating, open enrolment and lifetime cover, in addition to the risk profile of the insured community and the level of cover offered.

In recent years, it has been argued that competition has led to an increase in the level of benefits offered to consumers. Innovative products, such as those combining hospital cover with ancillary cover, have been introduced, as have policies covering those moving overseas for a period of time. These innovations have occurred within the current regulatory framework.

Operation of Markets and Competition

a) How should regulators, including independent sectoral regulatory authorities, achieve a balance in their decisions between commitments to competition and social goals in situations where the achievement of social goals e.g. law and order, public health is perceived to be adversely affected by decisions made according to competition criteria?

b) How can various considerations be balanced when regulating? For example, how can it be ensured that regulations do not impose restrictions which might lead to high prices and a lack of consumer choice while at the same time recognising that the need to regulate certain behaviours may sometimes take precedence over any such concerns?

d) What systemic and resource implications would arise from commitments to "proof" public policy proposals from a competition perspective e.g. as part of a wider system of Regulatory Impact Analysis?

f) Is it possible to devise and implement a test to ensure that disproportionate restrictions, which protect existing suppliers in the market against competition, are not introduced under the guise of social policy objectives?

g) Should we allow regulations that permit restrictions to entry? If so, might price controls be used to ensure that such restrictions do not result in large profits for existing market suppliers or adversely impact on the consumer or quality of service provided?

Balancing Aims

One of the principles underlying the private health insurance market in Ireland is that of community rating. This means that consumers taking out private health insurance pay the same premium for the same product, irrespective of age, gender or current or prospective states of health. This principle is enshrined in legislation. Community rating is a public policy objective, which is designed to promote the best overall interests of consumers, as it aims to ensure, insofar as is possible, that those who are most in need of private health insurance are not faced with prohibitive premiums.

Community rating inhibits competition for lower risk lives in the private health insurance market. Insurers are not allowed to engage in differential pricing strategies to attract in greater numbers of lower risk consumers – they must charge the same premiums irrespective of the risk status of the consumer. Hence, insurers may compete on the basis of price, but only provided that they offer the same product to all existing or potential subscribers at the same price. Insurers are also free to compete on a number of other grounds, such as organisational efficiencies, agreements with healthcare providers and the range of services that they offer (subject to meeting prescribed minimum benefit criteria, which are also deemed to be in the best interests of consumers and subject to offering the services to all consumers at the same price).

Sometimes, regulations may be put in place to safeguard the interests of consumers. Often competition is in the best interests of consumers, as competition affords consumers more choice and lower prices. However, in some instances competition may have an adverse effect on other consumer interests. If the regulations are designed to safeguard the interests of consumers then this should take precedence, although in these circumstances consideration should still be given to what measures can be taken to ensure that any adverse effect on competition is minimised.

In coming to any decisions, regulators should ensure that they consider all aspects of consumer interests and the facilitation of competition. They should be mindful of the effects their decisions will have on both. If both aims can be achieved, this would be preferable. However, if both aims cannot simultaneously be met, then the regulators should examine how consumer interests are or are not being served and how their

decisions would affect this. They should also examine alternative courses of action, to assess how consumer interests would best be served while minimising any adverse impact on competition.

'Proofing' Regulations

The 'proofing' of regulations from a competition perspective might be achieved in a number of ways. Consultation between the sectoral regulators and the stakeholders and other interested parties (including the Competition Authority) is one way of ensuring that competition issues are highlighted and taken into account. Another means of achieving this is through the co-operation agreements, required by the Competition Act 2002, to be signed by a number of sectoral regulators and the Competition Authority, which will formally require co-operation and consultation between the regulators and the Competition Authority.

Proportionality tests may be used to assess the likely impact of regulations. In some cases, empirical evidence is difficult to come by and therefore the tests must rely on overseas evidence, expert opinion and consultation with stakeholders, or as many of these as are available and appropriate. As mentioned earlier, regulators should give careful consideration to the likely impact of their decisions, but in some cases regulators must, to a certain extent, rely on their own judgement. In all cases, regulations should not treat specific suppliers differently. It may be the case that, given market conditions, some suppliers are affected more than others, or in different ways, but it should be the case that if market conditions were different, so too would be the effects on each specific supplier.

Restrictions to Entry

Some regulations may be seen as restricting entry to a market, but may actually only specify certain rules that must be adhered to by suppliers in that market. Any prospective entrant is free to enter the market, provided that they adhere to the rules set down in the regulations. Although some potential entrants may not wish to enter the market given the rules that govern that market, such regulations do not, of themselves, restrict entry to the market. A distinction must therefore be drawn between specific restrictions to entry and 'perceived restrictions' - regulations that may affect a potential new entrant's decision on whether or not to enter, which will be a normal commercial decision.

Whether regulations explicitly restrict entry into a market or merely specify rules that entrants must follow, the issues of necessity and proportionality must be addressed. Any regulations that impose restrictions, actual or perceived, should be necessary and proportionate to the aims for which they were designed.

QUALITY OF GOVERNANCE

Public Confidence in the Regulatory System

a) Given that consumers have traditionally been a diffuse group, how can their voice be strengthened?
c) What role can Information Technology play in tackling information asymmetries, as between producers, consumers and regulators?
e) How can we promote greater use of alternative forms of regulation? In particular, can self-regulation and co-regulation be used to a greater extent?

Strengthening Consumers' Voice

As stated earlier, the Office of the Director of Consumer Affairs nominated one Member of the Authority. The aim of this is to ensure that consumer interests are represented at the highest level within the regulatory framework of the private health insurance market. In addition, the Authority intends to allow for significant public input into consultation processes, when consumers have an interest in the subject of the processes. As noted earlier, consumer organisations are normally invited to participate and advertisements are placed in the national papers inviting contributions from the public. Such steps can achieve a great deal in terms of ensuring that the voice of consumers is heard. Depending on the structure of the regulatory bodies in other sectors it may be possible in some instances to have a representative of a consumer body on the board of the regulatory authority. If this is not feasible, then perhaps some form of consultative council might be appropriate.

Role of Information Technology

The producers/suppliers operating in a market can use IT to inform consumers. In recent years, there has been a marked increase in the amount of information available to private health insurance consumers in Ireland through the websites of both of the commercial insurers in the market. Both give access to a substantial amount of information on medical conditions through their website and both also offer on-line quotation facilities.

Sectoral regulators can also use IT to inform both producers and consumers. An example is the recent consultation paper, entitled *Risk Equalisation in the Private Health Insurance Market in Ireland*, made available by the Authority on its website. Responses received to this consultation paper will also be circulated and published on the Authority's website, so that producers and consumers can see the views expressed by interested parties. This also helps to increase the transparency of the Authority's decision-making process.

There may be a role for sectoral regulators in monitoring the information released into the public domain, within their sector, including via a website, in terms of ensuring accuracy and clarity of the information.

It should be noted that information technology has the potential to disseminate information to a wide audience in a convenient and cost-efficient manner. Its role in

tackling information asymmetries is therefore potentially very important. However, it could also be argued that the 'digital divide' – the gap between those who have access to, and skills in, IT and those who do not – may mean that information asymmetries within the consumer group are accentuated. Nevertheless, IT has a role to play in tackling information asymmetries between the interested groups (producers, consumers and regulators).

Alternative Forms of Regulation

Self-regulation or co-regulation may be appropriate in certain circumstances. However, it must be assumed that, in sectors where an independent regulator has been appointed, there is a need for such a regulator. Therefore, where self-regulation or co-regulation is allowed, the relevant sectoral regulator should at least have a supervisory or monitoring role. Such 'monitored self-regulation' or 'monitored co-regulation' might involve reviews being undertaken by the sectoral regulator at regular intervals.

Independent Sectoral Regulators

c) Should the accountability of independent sectoral regulators to the Oireachtas be strengthened, and, if so, what measures are required taking account of the role of the Oireachtas and the status of the regulators?
d) Are there adequate procedures for handling customer complaints in regulated industries?
e) Could the customer complaints function currently undertaken by sectoral regulators be carried out by an independent sectoral complaints commission, with an appropriate statutory basis and perhaps funded by the industry in question?
f) Are there any additional powers that regulators need to carry out their functions?
    i. Do they need additional safeguards (e.g. powers, resources etc.) to avoid industry capture?
    ii. Apart from their existing powers, how can it be ensured that regulators have access to accurate, relevant and timely information on which to base their decisions?

Accountability

The Authority as an independent regulator is accountable to the Oireachtas. Under the Health Insurance Acts, 1994 and 2001, the Authority's accounts, an annual report on the activities of the Authority and an annual report regarding the operation of any risk equalisation scheme, if payments commence under such a scheme, shall be submitted to the Minister for Health and Children who shall lay these reports before each House of the Oireachtas. The Minister may request additional information regarding these reports.

The current position regarding the level of accountability is considered to be appropriate.

Customer Complaints

The Authority will monitor the manner in which health insurers deal with their customers' complaints, particularly those regarding the levels and quality of health insurance provision.

As a regulatory body, the Authority provides an additional monitoring layer to ensure that the standard of health insurance provision is maintained to an acceptable degree. This aims to ensure quality of service for consumers, which will benefit the market generally. Consumers will be more likely to obtain private health insurance if quality can be assured. In this context, the Government has indicated its intention to review the Minimum Benefit Regulations and the Authority looks forward to having an input into this process.

The Authority intends to examine the area of customer complaints with a view to determining what action, if any, is required.

Regulatory Powers

The Authority carries out its statutory functions under the Health Insurance Acts, 1994 and 2001. These functions have been outlined in the Introduction.

In order to be fully independent, it is appropriate that sectoral regulators should be given appropriate powers e.g. to stipulate methods of accounting and auditing where returns by industry are required. Other issues of particular importance are staff recruitment and remuneration. Regulatory bodies should be empowered to recruit their own staff without the need to have salaries etc. for each candidate for each position agreed by their "parent" Department and/or the Department of Finance in advance, leading to delays and other difficulties in recruitment. The necessity for this approval also has obvious implications for the perceived independence of a regulatory body.

The Authority is a new regulator and in time, the need for any further powers may arise. In such a situation, the Authority may consider it appropriate to request that the Minister confer additional powers on the Authority, as he/she deems necessary.

Provision of Accurate and Timely Information

Regulators make decisions based on information provided to them from various sources. The information may be difficult to obtain on time and the accuracy of the information may be difficult to verify. The level of detailed information and the timeframe within which to obtain such information should be enshrined in legislation. If the relevant procedure regarding the timeframe is too detailed for primary legislation, it can be set down in statutory instruments or alternative legislation. Failure to comply with legislation should have penal implications to lend more strength and validity to the regulator's role.

Regulators should also be consulted if and when any prospective change or amendment in legislation is anticipated. Co-operative consultation between regulators and those drafting legislation would ensure that the formers' perspectives are taken

into consideration during the drafting procedure. This is especially useful when dealing with practical situations regarding the provision of accurate and timely information. Regulators have experience in the realistic timeframes for submission and provision of information. Verification of information submitted is often difficult and regulators generally have to rely on the accuracy of records and information of third parties.

EFFICIENCY AND EFFECTIVENESS OF THE PUBLIC SERVICE

The State's Regulatory Role and Competition Policy

b) What reasons, if any, are there for restricting entry into a particular industry or sector via a licensing regime? OECD mentions in particular lawyers, opticians, electric power, communications, oil, gas, air and bus transport, broadcasting and casual trade licences. Are those reasons objectively justifiable?

d) Is there a need to raise awareness amongst those concerned with the regulatory functions of the State as to the principles and benefits of competition and how could such upgrading of knowledge be achieved?

Licensing Regime

The justification for a licensing regime might be that it is in the interests of the common good or of consumers. For example, consumers may not fully understand the product or service that is being sold to them, in which case it would be better to ensure that the product or service meets a minimum standard. In some cases, it is a public policy objective to ensure that markets operate with such interests in mind. In such cases, a licensing regime might not be unduly restrictive. If a supplier in the market complies with the terms of the licensing regime then it should be straightforward for its license to be granted or renewed as the case may be. The corollary of this is that for a supplier not to have a licence granted or renewed then it must have acted in a manner incompatible with the interests of the common good or of consumers and should therefore not be allowed to continue operating in such a manner.

In the case of the private health insurance industry, companies wishing to sell insurance in this country must apply to the Authority to be added to The Register of Health Benefit Undertakings. Legislation requires that these companies must comply with regulations governing community rating, open enrolment and lifetime cover as appropriate. The products that are offered are also subject to minimum benefit regulations, which are in the interests of consumers receiving a minimum standard of product and are deemed to be necessary and proportionate. Furthermore, insurers in the market must meet minimum solvency requirements (although Vhi Healthcare is currently exempt from these, the Government, in the 1999 White Paper on Private Health Insurance, stated its intention to give "full commercial freedom" to Vhi Healthcare, although it ruled out an immediate full sale).

In the case of private health insurance, consumers' interests are manifold. There are monetary interests (to have affordable private health insurance) and clinical interests (to ensure that they will have sufficient cover for treatments that they might require). These interests are partly served by the public policy objectives for private health insurance, which include community rating, open enrolment and lifetime cover.

In such a situation and in the absence of a licensing regime, the entry of a low-cost seller into the market may not necessarily be beneficial if their products do not provide sufficient cover. Thus, enforcing a set of minimum standards prevents the entry of insurers who would not meet these standards. The alternative would be to

allow such an insurer to enter the market and let consumers 'vote with their feet'. In such cases, information asymmetries may lead to consumers not purchasing the most suitable products. As an individual's health is of great importance, it is far better to proactively ensure that this does not happen rather than to allow such a situation to arise and then wait for supply and demand mechanics to take over.

Awareness of Competition Issues

Many of those involved in carrying out the regulatory functions of the State already have a working knowledge of the principles and benefits of competition, either through education or experience. Such knowledge is, in most if not all cases, useful for those carrying out the regulatory functions of the State. In some instances, regulators are mandated to have regard to competition issues, in which cases they would be obliged to be conversant with such issues. Indeed, one of the main reasons for regulations to be put in place is because markets have been opened up to competition.

For example, the Health Insurance (Amendment) Act, 2001 states that, in deciding whether or not to recommend a risk equalisation scheme, the Authority must consider whether such a scheme would be in the best overall interests of consumers. The Act goes on to state that, in this regard "the best overall interests of health insurance consumers includes a reference to the need to maintain the application of community rating across the market for health insurance and to facilitate competition between undertakings."

There are a number of ways of ensuring that such knowledge is conveyed to those working in the field. One such method is through formal training. The co-operation agreements between the sectoral regulators and the Competition Authority, mentioned earlier, will raise awareness of competition issues. The recruitment of people with private sector experience would increase the pool of knowledge of competition issues, as these people will have first-hand experience of competition. The retention of consultants may also be an option, while consultation processes will, in many cases, ensure that competition issues are raised and discussed.

Equality, Equity and Social Inclusion in the Delivery of Public Services

d) Should proposed regulations be subject to a proportionality test to ensure that protectionism is not maintained under the guise of social policy objectives? That is to say, proposed regulations might be examined to ensure that the burden that they are likely to impose is proportionate to the benefits that they will provide?

As discussed earlier, proportionality tests may be more or less difficult to carry out in certain instances to assess the likely impact of regulations. A lack of comparable empirical evidence in some cases may mean that expert opinion and consultation with stakeholders and the public, as appropriate, will form the basis of proportionality tests. If a test reveals that the benefits of regulations will outweigh the costs to the market, then such regulations can be effected. If, on the other hand, it is shown that

regulations would place disproportionate burdens on the market, then the regulations may be modified to ensure that less of a burden is placed on the market, while still fulfilling the original public policy objectives.

The Authority has a role in monitoring health insurance developments in general and will advise on such issues as appropriate. The Authority's mandate is to ensure the fulfilment of social aims. The Authority intends to make its decisions as transparent as possible – through consultation among other methods – so that it can be seen that the interests of the common good and the facilitation of competition are considered and that any proportionality tests, as appropriate, have been undertaken.

Assuring High Quality Regulation

b) Can an approach be agreed to ensure that all prospective statutes are drafted with a view to consolidation?
c) Should a decision be taken to confer responsibility for the modernisation of the statute book on a particular body and, if so, which body?
e) How can we assess the level of enforcement of and compliance with regulation?
f) Can we develop criteria to determine when regulations are considered to be obsolete or ineffective?
j) How can we best ensure that new regulations conform to certain minimum principles and standards?

Modernisation and Consolidation

Modernisation and consolidation of legislation is essential. One of the functions of each regulatory body should be to monitor the development of its legislation generally and to ensure that legislation introduced in other sectors, which is also relevant to its particular sector, is enforced where necessary. This may include consultation processes in relation to relevant market procedures and consumer practices. Extensive and comprehensive consultation processes and obtaining proper professional advice are also essential. If a regulatory body, through its monitoring role, discovers a need for legislative reform, it should be brought to the attention of the relevant Department, which would have responsibility to pursue the matter with the office of the Attorney General, the Law Reform Commission or any other relevant organisation or body having responsibility within that area.

Enforcement Powers

A key function in relation to regulatory bodies is to monitor current market situations at different points in time and observe changes in the market in the relevant industry. Identification of ineffectiveness, inefficacy or non-compliance with legislative measures may be achieved through proper monitoring procedures. When such identification occurs and the regulator has reported the situation to the Minister, there may be no further course of action open to a regulator. This may diminish the regulator's potency as an enforcement agency within a sector. Enforcement may also be difficult for regulatory bodies due to financial constraints. Regulators' enforcement powers are often limited and depend upon the nature of the breach.

The Authority monitors the health insurance industry generally and may make recommendations to the Minister on any matter the Authority deems appropriate to health insurance.

Better Analysis of the Effect of Proposed Regulations

a) How best might impacts be quantified e.g. through cost-benefit analysis or other methods?
b) To what extent can/should policy-making be evidence-based? To what extent is such evidence (e.g. statistics and reports) available to policy-makers and to what degree are information asymmetries likely to impede this approach?
e) How do we ensure an implementation of RIA that is proportionate and effective – considering the benefits expected from the introduction of RIA, the resources that it might require and international experience of the implementation of existing RIA models?

Quantifying the Impact of Proposed Regulations

The Authority does not have the power to make regulations. However it is responsible for monitoring the operation of the Health Insurance Acts, 1994 and 2001, the carrying on of health insurance business and developments in relation to health insurance generally, and for advising the Minister on matters relating to the Minister's functions under the Acts, the Authority's own functions or health insurance generally. Furthermore the Authority will be responsible for operating any risk equalisation scheme that might be introduced through regulation. Other regulations issued under the Health Insurance Acts also impact greatly on the work of the Authority.

It is in this context the Authority feels that it is appropriate that the Minister for Health and Children and his/her Department should consult with the Authority when drafting regulations under the Health Insurance Acts. The Department of Health and Children has consulted the Authority in relation to draft risk equalisation regulations and has sought the Authority's views in relation to drafting regulations for lifetime community rating.

Those responsible for drafting regulations should quantify the effect that the regulations might have on the interests of the common good and on the overall interests of consumers. They must look at the positive effects that the proposed regulations would have on these interests and must ascertain whether the regulations are necessary to achieve this effect or whether some other method would be preferable. They must also look at the negative effect that proposed regulations would have on the interests of the common good and of consumers and in this case must ascertain whether these negative effects outweigh the positive effects i.e. is there a proportionate benefit to the common good and to the interests of consumers?

These principles of necessity and proportionality are already well established. However, tests of necessity and proportionality are often extremely difficult to conduct in advance of the commencement of the regulations due to a lack of available

empirical evidence. Those drafting regulations often have to rely on evidence from overseas, expert opinion and the views of stakeholders as well as their own judgement. Furthermore, evidence from overseas is often either unavailable or inappropriate. In most cases it is appropriate for those drafting regulations to engage in a consultation process in which views are sought from interested parties. The views of the interested parties can then be used when quantifying the impact that the proposed regulations would have on the common good and on the interests of consumers.

The consultation process also provides an opportunity to debate different points of view with interested parties and ensure that all points of view are taken into account. Once the consultation process has been completed the submissions received during the consultation process should normally be published. The publication of submissions allows all interested parties to see the different arguments made to the regulator during the consultation process. The Authority has just completed such a consultation processes. The purpose of the consultation process was to seek the comments of stakeholders and interested parties on matters related to risk equalisation. In particular the Authority was seeking views on how it should exercise its responsibilities in relation to risk equalisation.

Extent to which Policy Making Should be Evidence Based

Policy making should always be evidence based. Such evidence can come in the form of statistical or empirical evidence, expert opinion or submissions from stakeholders. As stated above it can often be the case that relevant statistical or empirical evidence is unavailable. In these circumstances regulators must rely on a wide-ranging consultation process in which the views of stakeholders and experts are taken into account.

Regulatory Impact Analysis

The introduction of a system of Regulatory Impact Analysis would benefit the quality of regulation in Ireland but such analyses may have a negative effect on the timing and throughput of policies. The Authority believes that the processes involved in a Regulatory Impact Analysis that would delay regulation are normally worthwhile, however it is aware that it may not always be possible to undertake such analyses due to, *inter alia*, the urgency of the requirement for legislation. The processes used by The Health Insurance Authority already have much in common with the processes involved in a Regulatory Impact Analysis.

General Observations

When establishing a new regulatory body, there should be a central source for the provision of general information required by all newly established bodies. This would promote a uniformity of approach and facilitate the establishment process. Information on general issues would include, *inter alia:*

- Setting up the requisite contracts, provision of full documentation, tendering requirements, etc.
- Acquiring accommodation /premises for the new regulatory body;
- Recruiting staff; and
- Corporate governance issues
- Consideration should also be given to the establishment of a single superannuation scheme to cover a variety of bodies, etc.

The Authority is of the view that consideration should be given to the inclusion of a standard provision in legislation granting regulatory bodies indemnification from all legal actions that may be taken against them as a result of their actions. Similar provisions should be made for individual members of such bodies.