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India

Insurance & Reinsurance

Recent Developments in the Health Insurance Market

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This update summarises the regulatory framework for health insurance and analyses the insurance regulator's recent circular of March 31 2009. It also looks at the market scenario for health insurance and identifies certain regulatory issues, including renewals for senior citizens (for further details please see "The Changing Health Insurance Market").

Market Overview

The Indian health insurance market has shown positive growth rates in recent years and is projected to grow at a rate of 31.5% during the period 2007 to 2015. Reports indicate that the expected value of the health insurance sector is likely to reach Rs280 billion by 2015. With growing costs of medical services and only approximately 2% of the population already insured, health insurance is potentially one of the fastest-growing insurance sectors in the country.

Regulatory Framework

The Insurance Regulatory and Development Authority (IRDA) has been encouraging the growth of standalone health insurers through various measures, including a recommendation for lower minimum capital and separate solvency requirements for standalone health insurers.

However, despite this institutional framework prescribed by the IRDA, there has been a lack of uniform guidance on some key aspects, for example:

- the treatment of senior citizens;
- a uniform definition of 'pre-existing disease'; and
- policy renewals.

The IRDA and the Indian courts have been issuing guidance for insurers on some of these issues. For example, through its March 7 2008 press release the IRDA instructed all public sector general insurance companies that: (i) the loading of premiums for renewals of mediclaim policies issued to senior citizens must not exceed 50% to 75% of the premiums charged prior to the revision; and (ii) senior citizens cannot be compelled by insurers to migrate to other health insurance products if it is to their disadvantage.

The Indian courts have also adjudicated on similar issues. For example, in *New India Assurance v Akshoy Kumar Paul* (November 2007) the Delhi High Court categorically stated that on renewal, mediclaim insurance policies cannot exclude diseases that are contracted after insurance cover is taken out for the first time.

Recently, while adjudicating on a number of disputes related to non-renewal of mediclaim policies in *United India Insurance Company Limited v Manubhai Dharmasinhbhai Gajera* (May 2008), the Supreme Court directed the IRDA to lay down clear guidelines on such matters by way of regulations or otherwise. Briefly, the Supreme Court held the refusal to renew a policy and the addition of exclusions on renewal as arbitrary and directed the insurers to renew the policies. The Supreme Court based its decision on the fact that the insurers involved in this case were public sector companies, against which the fundamental rights of India citizens granted under the Indian Constitution were enforceable. However, by directing the IRDA to consider the matter, scrutinise such claims and issue clear guidelines, it would appear that the Supreme Court was indicating that such prescribed regulatory provisions would be applicable to all players in the field, whether public or private sector.

New Regulatory Provisions

Following these judgments and the recommendations from committees constituted for the study of this sector, on March 31 2009 the IRDA issued a circular on the renewability of health insurance policies. The circular is applicable to all general insurance companies (not only public sector insurers), and contains the following main points:

- Health insurance policies shall be "ordinarily renewable", subject to exceptions on grounds of fraud, moral hazard or misrepresentation.
- If renewal is sought by the policyholder, it cannot be rejected on arbitrary grounds.
- Denial of renewal on the grounds of claims made by the insured in a previous year is expressly prohibited.
- An insured cannot be compelled to switch to another health insurance product unless the existing product under which it is insured is being upgraded or discontinued with the approval of the IRDA.

The circular also specifies that health insurance policies must contain a clause providing for a mechanism to condone delays in renewal for up to 15 days from the renewal due date. The insured would be treated as continuously covered in terms of continuity benefits, such as waiting periods and coverage of pre-existing diseases. The clause must also specify that coverage will not be available for a period for which no premium is received.

The circular would appear to provide for almost guaranteed renewal on the same terms and to leave little scope for an insurer to deny renewal except on the limited grounds expressly provided for in the circular. While insurers can pre-define the terms of renewal, this is subject to approval from the IRDA at the file and use (pre-launch) stage and is likely to be subject to the IRDA's overall approach of non-arbitrariness towards policyholders.

The circular applies to all health insurance policies "issued or renewed on or after June 1 2009". This indicates that all existing general insurers must modify all existing health insurance policies before June 1 2009. This process will include revising the policy wording and prospectus, obtaining approval from the IRDA and circulating endorsements to all existing customers.

Most recently, through a May 25 2009 press release, the IRDA issued instructions to all insurers on health insurance for senior citizens. The IRDA's specifications include the following:

- Health insurance products must allow entry until at least 65 years of age. Any differences in product specifications applicable to different age groups must be explicitly mentioned in the prospectus and policy documents.
- Reasons for denial of insurance to a senior citizen on any grounds must be intimated in writing and such grounds must be reasonable.
- Health insurance policies must enclose an annexure briefly describing in simple language the coverage and the key terms and conditions of the policy.
- Where the risk is accepted, insurers must reimburse at least 50% of the cost incurred by the insured in the pre-insurance medical examination.

These instructions are applicable to all policies issued or renewed on or after July 1 2009. As with the earlier circular, existing insurance products must be modified according to the circular.

It is well known that renewals of health policies, particularly for senior citizens, and the application of exclusions, specifically for pre-existing ailments, have been areas of concern for insureds, the courts and the insurance regulator. With the recent Supreme Court decisions and the IRDA's follow-up circular, the Indian market can soon expect to see the benefits of a more streamlined health insurance sector.

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