

Our Ref: 1146532
Your Ref: AA1000636

28 March 2023

By Email Only
Attention: Bethany White
Australian Competition & Consumer
Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Email: exemptions@accc.gov.au

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Dear Ms White

Health Partners Limited – Application for authorisation AA1000636 – Interested party consultation

We act for Health Partners Limited in respect of the above matter (**Application**).

The terms in the Application are adopted and applied in this letter.

As part of the interested party consultation, the Australian Dental Association Inc. (**ADA**) made a submission in respect of the Application. Our client wishes to address the comments made as part of the ADA's submission.

1. General Comments

Our client respectfully considers that the general concerns raised by the ADA in its submission are misconceived.

The ADA specifically '*raised long-standing concerns about the overall impact of price-capping arrangements and whether they are genuinely in the public interest*'.

In this respect, the ADA submission seems to proceed on the fundamental misapprehension that the Application seeks a broad imposition of price-capping of dental services. That is incorrect.

As outlined in the Application, the Capped Services have been selected because of their nature as common routine tasks. In respect of services other than the Capped Services, the Partner Practice will have set its Usual Fee Schedule itself, based on

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its experience of the applicable costs, and instances where those costs are likely to vary and, to the extent that a service rendered reveals the need for an additional dental service, that will be a separate item to be agreed as between the Member and the Partner Practice, which may itself be subject to its own capped price, either as another Capped Service or via the Partner Practice's Usual Fee Schedule.

The interests of the Partner Practices are protected. Our client is not proposing to:

- (a) impose Capped Services for high cost services such as crowns, dentures, dental implants or orthodontics;
- (b) restrict fees for services outside of the Capped Services, except to ensure that Partner Practices do not charge Members higher than the Usual Fee Schedules offered to other patients;
- (c) restrict the amount charged to non-Members for the Capped Services, or limit the ability to offer services to non-Members;
- (d) dictate the precise fees charged to Members for the Capped Services, or any other service;
- (e) set a minimum fee to be charged to Members for the Capped Services, or any other service;
- (f) require that the Partner Practice only engages in the Partner Program (allowing the Partner Provider to engage with other health insurers);
- (g) require all dentists or dental practices in a group to be a part of the Partner Program; or
- (h) require any form of volume commitment from Partner Practices.

Further, in order to strike a balance between price certainty for its Members and commercial viability of the Partner Practices, in some circumstances Partner Practices may charge above the applicable cap (whether the Capped Service price or the Partner Practice's Usual Fee Schedule) to cover legitimate expenses.

The public benefits of the Partner Program and the associated public interest considerations are also set out in the Application.

The proposed model will allow Members who cannot access an Applicant Practice to benefit from being able to access known-gap dental services with lower out of pocket costs.

If authorisation is granted, the Partner Program will allow our client to ensure that Members who are not within a reasonable distance of an Applicant Practice can access a range of dental services without paying an unknown gap.

The Member will also have comfort that our client has a degree of oversight over the standards applied in the Partner Practice through contractual arrangements.

Our client proposes to enter into agreements with a number of private dental providers in South Australia who are not within a 20km radius of any Applicant Practice.

If authorised, Participating Dentists will charge the Members at or below the maximum fees for each of the Capped Services, as set by our client, except in certain exceptional circumstances. Our client will charge the same amounts for the Capped Services at its Applicant Practices (although the rebates received by Members from their extras policies may vary). The agreement does not propose to otherwise set the fees for other dental services, except to ensure that Members are not charged more than a Partner Practice's Usual Fee Schedule offered to other patients.

Further, as a key purpose of the Partner Program is to ensure that Members have local access to affordable dental services, the location of Partner Practices is of considerable importance to our client. Partner Practices will accordingly be appointed on a site-by-site basis.

Our client will not require all dental practices owned by one group to be part of the Partner Program. Individual dentists operating across multiple dental practices could elect to only participate in the Partner Program at one or a limited number of their relevant locations.

If a Partner Practice no longer wants to participate in the Partner Program, the Partner Practice will be able to terminate the associated agreement without cause by providing at least 60 days' notice. This allows withdrawal from the Partner Program if the terms are not considered appropriate for the Partner Practice.

Health Partners' position is that the proposed conduct is likely to result in public benefit by providing Members with greater access to 'known-gap' preventative dental services, and hence at lower cost to those consumers. By providing consumers with more certainty around the price of preventative and diagnostic dental services, the consumer is more likely to make more frequent visits to the dentist, and address issues sooner, hopefully avoiding later need for more costly reactive dental services.

In Australia, the majority of dental services are delivered privately. Medicare does not cover most dental care, dental procedures or supplies. Some public dental services are provided by state and federal governments, generally only to concession card holders and children, or for emergency treatments. Many Australians therefore rely on their private health insurance to cover the cost of dental, with data published by the Commonwealth Government's Australian Institute of Health and Welfare (**AIHW**) suggesting that more than half of Australians aged 5 years and over have some level of private health insurance cover for dental expenses.

Even with private health insurance, consumers may still be required to make an out-of-pocket payment. The same AIHW publication notes that in 2017-18, around 76% of adults aged 18 years over reported that their dental expenses were partially covered by insurance, and partially paid directly by the patient.

The Capped Services will provide price certainty for consumers, so that Members know that their routine dental visit will have affordable out of pocket costs. By

providing this certainty, it is likely that Members will be encouraged to increase the frequency of routine dental visits.

Routine dental visits are important for Members as they assist in both preventing dental conditions in the future and identifying any existing dental conditions early. These measures will then reduce the frequency and severity of major dental issues in the future.

The importance of routine dental care has been heightened as a result of the COVID-19 global pandemic. Access to health services, such as dental, was significantly limited over the past 2- 3 years due to the public health safety measures put in place. It is therefore important to encourage Members to return to receiving routine dental care.

Over the longer term, our client expects that these measures will result in a reduction in the need for surgical and major restorative dental procedures. This benefits consumers in the long term by reducing their out-of-pocket costs for dental procedures which could have been avoided with adequate dental care.

The Partner Program will be focussed on regional South Australia, outside the Adelaide metropolitan area. Our client is eager to ensure that South Australians living outside of Adelaide have easy access to dental care, with the Partner Program to assist in this respect. Our client anticipates that the Partner Program will generate business for Partner Practices, by making Members more likely to visit those premises for Capped Services (and more likely to procure further services if and when dental issues are identified in the course of the Capped Services).

Our client accordingly hopes that the Partner Program will improve the viability of those regional dental practices, so that they can continue to serve their local communities and be available for Members and non-Members alike.

The proposed conduct would also promote competition between health insurance providers. Given that other health insurance providers already offer similar benefits, to remain competitive our client needs to have a similar program. This competition then encourages the consumers to take up private health insurance, as they can see how the insurance will benefit them. Ultimately, this provides a public benefit to healthcare systems by encouraging the utilisation of private medical services (including outside of dental services).

2. Proximity

The ADA appears to have missed that this Authorisation would only permit our client to enter into agreements with dental practices *who are not within a 20km radius* of our client's own dental practices, ie, dental practices which are **not** located within close proximity of a current Health Partners dental practice. Although proximity is not necessarily a precise concept, the model proposed by our client is aimed at **regional** dental practices, and ensures that there is an objective buffer in place.

Further, it is incorrect to suggest that our client has assumed that Part IV Division 1 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) will not apply to the extent '*an insurer does not operate its own practices in geographic proximity to any dental practices that are subject to its price-capping arrangements*'. To the contrary, our

client has made the Application to avoid any risk of contravening Part IV Division 1 of the CCA, should there be any suggestion that it is in competition with the relevant dental practices despite the geographic distance between them.

If you have any questions in respect of the above, please feel free to contact us.

Kind regards



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