

Authorisation (Non-Merger) Application

Application for authorisation - s 88(1), *Competition and Consumer Act 2010* (Cth) (CCA)

Application for urgent interim authorisation - s 91(2)(d), CCA

Parties to the proposed conduct

1. Applicant

- 1.1 The applicant is Health Partners Limited ACN 128 282 904 (ABN 43 128 282 904) (**Applicant**).
- 1.2 The Applicant's details are set out in Schedule 1.
- 1.3 The Applicant is a private health insurer, based and primarily operating in South Australia. The Applicant offers two types of health insurance to persons eligible to hold health insurance in Australia, being hospital cover and/or extras cover. Individuals holding such cover will be members of the health insurance fund (**Members**).
- 1.4 The Applicant is structured as a company limited by guarantee, operating as a not-for-profit health insurer. Under this structure, the Applicant is operated solely for the benefit of its Members.¹
- 1.5 In addition to health insurance services, the Applicant also provides the following goods and services through physical stores (**Applicant Practices**):
 - (a) dental services, including various dental services to prevent and treat dental conditions;
 - (b) optical services, and eye health related services, such as testing; and
 - (c) optical goods, including the sale of prescription and non-prescription glasses and sunglasses.
- 1.6 The above services are offered via the Applicant Practices to the public at large, not just the Applicant's health insurance Members.
- 1.7 The dental services offered by the Applicant are provided by General Dentists, Dental Hygienists and Oral Health Therapists and include preventative, diagnostic and restorative services. Complex dental services that require specialised clinical care, such as those performed by Orthodontists, Periodontists, Endodontists and Prosthodontists, are not provided at the Applicant Practices.
- 1.8 In addition to the Applicant Practices, the Applicant proposes to establish a partner network of dental practices to supplement the dental services available to Members.

¹ <https://www.healthpartners.com.au/about>

2. Other persons

- 2.1 The Applicant is also making this application on behalf of dentists and dental practices who enter into agreements with the Applicant to form part of its partner network of dental practices (**Partner Practices**).
- 2.2 The Applicant proposes to enter into agreements with Partner Practices, which agreements have provisions that are subject to receiving an authorisation for the proposed conduct. At date of submitting this application, the Applicant has entered into one such agreement. The details of the Partner Practice with whom the Applicant has entered into an agreement are included with this Application at **Annexure A**.
- 2.3 The list of Partner Practices will be revised as further practices agree to become part of the partner network. It is not possible to definitively or exhaustively list all future practices at this time, as the decision as to whether to participate will be up to each separate practice.

The proposed conduct

3. The conduct proposed to be authorised

Provide a description of the proposed conduct and any documents that detail the terms of the proposed conduct

- 3.1 The Applicant proposes to enter into agreements with Partner Practices to establish a network of dental practices (**Partner Program**) which:
- (a) uphold certain minimum standards of dental practice;
 - (b) are located geographically in different places around the State of South Australia;
 - (c) are promoted to the Applicant's Members; and
 - (d) bear signage with the Applicant's branding (but each Partner Practice remains trading under its own brand).
- 3.2 Those agreements will also contain provisions which are contingent on the ACCC's authorisation, and of no effect unless and until that authorisation is granted. Those provisions would require the dental practice to:
- (a) cap the maximum prices for certain routine dental services provided to Members, including preventative and diagnostic services (**Capped Services**); and
 - (b) for all services rendered to Members, ensure that Members are charged no more than the Partner Practice's usual fee schedule for other patients (**Usual Fee Schedule**).
- 3.3 This will allow Members to receive these Capped Services on a 'known-gap' basis with lower out of pocket costs, depending on the Member's level of extras coverage, without

potential for Members to suffer price discrimination in respect of other services offered by the Partner Practice.

- 3.4 The Capped Services which will initially form part of the Partner Program are set out in Annexure B. The Capped Services are a set of services listed under the item codes set by the Australian Dental Association. Of the current 363 items codes in the Australian Dental Association's Item Glossary, 40 items will form part of the initial set of Capped Services.
- 3.5 Further, the Capped Services are a small subset of all dental services offered by dental practitioners.
- 3.6 The Applicant seeks to be able to make adjustments to the Capped Services over time to include additional or substitute routine dental service items as the Partner Program evolves, or in order to reflect any relevant changes made to the ADA Items Glossary or clinical practice. The Applicant proposes that the relevant contractual arrangements would allow the Capped Services and applicable fees to be revised from 1 July each financial year, but no more frequently.
- 3.7 As a key goal of the Applicant in its Partner Program is the continued ease of access by its Members to dental services, especially in regional areas, the Applicant is eager to ensure that the Partner Program operates in a manner which is sustainable for its Partner Practices. Pricing for the Capped Services is to be set accordingly, at the same prices for those services charged by the Applicant Practices.
- 3.8 Notwithstanding this, the Applicant recognises that, in complex or unusual cases, a service may involve higher costs for the Partner Practice than the applicable Capped Service price or Usual Fee Schedule. The Applicant is eager to strike a balance in those scenarios between price certainty for its Members, and commercial viability of the Partner Practices.
- 3.9 The agreement allows the Partner Practice to charge above the applicable cap (whether the Capped Service price or the Partner Practice's Usual Fee Schedule), but only in very limited circumstances.
- 3.10 A Partner Practice is only permitted to charge above the fee cap where there are unexpected costs for the provision of the services to an individual Member, such as higher than normal lab cost or material costs. Further, any increase must be '*directly referable to the underlying cost increase, and only on a case-by-case basis*'. Therefore, any increase is solely to allow the Partner Practice to ensure that it can cover its legitimate costs.
- 3.11 The Applicant believes that the instances where this may prove necessary should be very limited, on the basis that:
 - (a) the Capped Services have been selected because of their nature as common routine tasks;
 - (b) in respect of services other than the Capped Services, the Partner Practice will have set its Usual Fee Schedule itself, based on its experience of the applicable costs, and instances where those costs are likely to vary; and

- (c) 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.
- 3.12 Members will still be aware of their gap payable as the agreement expressly requires that Partner Practices:
- (a) *'have processes in place to ensure Members can be provided with an estimate of their out-of-pocket payment (gap) prior to commencement of their treatment'*; and
- (b) *'ensure all Members are provided with appropriate information about the benefits, risks and costs of any proposed treatment to enable the Member (or an appropriate person acting on behalf of the Member) to provide informed consent to undertake that treatment'*.
- 3.13 Health Partners will also use its own internal mechanisms to monitor each case where a Partner Practice has exceeded the amount set for a Capped Service or agreed in a Usual Fee Schedule. When a Partner Practice charges a Member above such amount, Health Partners has the contractual ability to require that the Partner Practice provide relevant information to support each exception. Health Partners intends to exercise this right, and will then review this information to ensure that the higher cost charged to the Member was an unexpected cost. Health Partners can terminate its agreement with a Partner Practice where it has not acted in accordance with these requirements.
- 3.14 Health Partners' policies are such that Members typically receive a fixed percentage of costs associated with dental treatments, up to an annual policy limit. Accordingly, in circumstances where a higher amount is charged by a Partner Practice for a service, Health Partners would also be contributing a higher benefit to Members yet to reach their policy limit.
- 3.15 The Applicant 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.
- 3.16 The Applicant currently successfully operates a similar model in respect of physiotherapy practices, noting however that the Applicant does not operate any of its own physiotherapy practices and therefore is not in competition with those physiotherapy practices, and the need for authorisation does not arise.
- 3.17 Current model
- (a) Under each health insurance policy offered by the Applicant, each item code has a set maximum amount that the Applicant will pay towards that service. This is based on the cost that the Applicant has determined is market value for the service. It is common for a provider to charge above the amount it receives from the Applicant, in which case the patient is charged the surplus amount as a 'gap'.
 - (b) The Applicant already offers dental services through its Applicant Practices. A full list of current optical and dental practices operated by the Applicant is listed in Schedule 2.
 - (c) Members with extras cover are able to access, and make associated claims against their policy's annual entitlements with respect to, dental services from either accredited private dental practices **or** from the Applicant Practices.
 - (d) If a Member receives services from an Applicant Practice, depending on the services provided and the Member's level of cover and annual limits in their extras policy, the services set out in Annexure B will be provided on a fixed price (and therefore 'no-gap' or 'known-gap') basis. Non-members with a health insurance policy with another health insurance provider are not guaranteed to receive the same services on that same 'no-gap' or 'known-gap' basis. However, non-members (including non-members who do not hold any health insurance policy) can still access the services at the Applicant Practices.
 - (e) Where a Member is attending a private dental practice, the Member may be required to make a payment to cover the gap between what the dentist has charged and what the Applicant's extras policy has covered, meaning the member is required to pay out of pocket costs.
- 3.18 Proposed model
- (a) 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.
 - (b) If authorisation is granted, the Partner Program will allow the Applicant 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 the Applicant has oversight over the standards applied in the Partner Practice through contractual arrangements.

- (c) The Applicant 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.
- (d) If authorised, Participating Dentists will charge the Members at or below the maximum fees for each of the Capped Services, as set by the Applicant, except in certain exceptional circumstances. The Applicant 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.
- (e) 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 the Applicant. Partner Practices will accordingly be appointed on a site by site basis. The Applicant 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.
- (f) 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.

3.19 A copy of the template agreement which the Applicant proposes to put to dental practices has been provided to the ACCC on a confidential basis alongside this Application. The Applicant has entered into an agreement with the Partner Practice listed in Annexure A on these terms, and proposes to enter into agreements with each potential Participating Dentist on substantially similar terms, but these would be separate agreements and therefore there could be instances where a Participating Dentist negotiates amendments to those terms. For the purpose of this authorisation, the Applicant confirms that each agreement has or will:

- (a) incorporate the key elements discussed above, including the ability for the Partner Practice to terminate without cause, and provisions (subject to authorisation) which set a cap (subject to the limited exception to charge above a cap where necessitated by the Partner Practice's input costs) on amounts to be charged to Members by the Partner Practice for a limited list of Capped Services; and
- (b) not limit the ability of a Partner Practice to service non-Members, nor place any restrictions on amounts charged to non-Members.

CCA provisions relevant to the conduct proposed to be authorised

3.20 The Applicant has identified that there may be a potential risk that the Partner Practices could be considered to be in competition with the existing Applicant Practices. Given that the Applicant Practices and Partner Practices will not be in close proximity to each

other, the Applicant consider this to be a relatively low risk, but the Applicant does note the possibility nonetheless.

- 3.21 The proposed conduct could therefore constitute an agreement between (arguable) competitors, and in that way possibly constitute a contravention of Part IV Division 1 of the CCA.
- 3.22 There may also be a limited risk that the conduct, if not authorised, would be capable of contravening section 45 of the CCA, if it can be considered to constitute an arrangement that has the effect of substantially lessening competition.

Rationale for the proposed conduct

4. Rationale for the conduct proposed to be authorised

- 4.1 There are several motivations for the Applicant to instigate the Partner Program.
- 4.2 As the Applicant is a not-for-profit, its primary motivation in all activities is to provide beneficial health outcomes for its Members. The Applicant believes that the Partner Program incorporating the Capped Services is likely to provide several benefits to Members, including:
 - (a) encouraging Members to proactively seek out preventative dental services, which should hopefully lead to positive health outcomes and minimise the need for reactive dental services to address more serious issues in future;
 - (b) providing Members with more certainty about the amounts they will pay for routine dental services;
 - (c) ensuring that quality dental services are available to Members at affordable rates in a greater range of geographic locations; and
 - (d) providing Members with greater value from their health insurance policies.
- 4.3 The Applicant also seeks to instigate the Partner Program with Capped Services in order to provide a competitive offering in the health insurance market, as similar programs are offered by other providers.

The term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why

5. Authorisation Term

- 5.1 Authorisation is sought for a period of 10 years from the date of the ACCC's final determination.
- 5.2 The Applicant requests 10 years to allow the applicant to build its partner network over time. This will allow the Applicant to ensure that it is engaging with appropriate dental providers and building a thoughtful network.

5.3 The Applicant acknowledges that s 91B of the CCA permits the ACCC to revoke any authorisation in the event of a material change in circumstances and will advise the ACCC if such circumstances arise.

6. Interim authorisation

6.1 The Applicant seeks an interim authorisation to allow it to progress and conclude its negotiations with potential providers. The Applicant has identified that there is a need to encourage Members to continue to receive regular dental care. In particular, the Applicant has seen a drop in access to dental services as a result of the COVID-19 pandemic.

6.2 Therefore, the Applicant has considered that it is important to allow Partner Practices to provide Capped Services as a matter of priority.

6.3 The Applicant also considers that there is limited risk in granting an interim authorisation as this model has already been adopted by other health insurance providers. In particular, the health insurance fund HCF has received an authorisation for similar conduct (see paragraph 13).

6.4 The Applicant submits that the same considerations set out in this Application in support of final authorisation apply in relation to their request for interim authorisation, and requests that the ACCC grants interim and final authorisation under section 88(1) of the CCA in respect of the proposed conduct described in this Application.

6.5 The Applicant also notes that if, during the interim authorisation period, the ACCC identifies concerns about the proposed conduct, it may review and revoke that authorisation at any time.

6.6 Further, interim authorisation will not give rise to permanent changes which would prevent the market returning to its pre-authorisation state if final authorisation is not granted.

7. Persons directly affected by the proposed conduct

7.1 The Applicant, Partner Practices and Members will be directly affected by the proposed conduct.

7.2 Other dental providers and other health insurance providers may be indirectly affected insofar as the outcome of the proposed conduct, if authorised, may affect how individuals select their health insurance provider and/or dental practice.

7.3 Although the impact of the proposed conduct will potentially affect the broader market and consumers generally, any such effect would be minimal and the proposed conduct the subject of this Application will not materially change the markets in which the Applicant operates.

8. Market information

Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the

proposed conduct overlap (compete with each other) or have a vertical relationship (eg supplier-customer).

- 8.1 In respect of this Authorisation, the Applicant operates in two distinct markets, being:
- (a) the private health insurance market; and
 - (b) the dental services market.²
- 8.2 As well as operating distinctly in both markets, the Applicant has an existing role which effectively straddles both markets, as a source of payment to dental service providers for services rendered to the Applicant's Members.
- 8.3 The Applicant only has a significant role in the health insurance market in South Australia, with the overwhelming majority of its Members located within that State.
- 8.4 The Applicant's role in the dental services market is not significant and is limited to its four Applicant Practices in different parts of metropolitan Adelaide.
- 8.5 The Applicant is accordingly:
- (a) in competition with other health insurers; and
 - (b) both:
 - (i) a source of revenue for dental practices across South Australia; and
 - (ii) in competition with private dental practices which operate in Adelaide suburbs that are in close proximity to its Applicant Practices.

In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

An overview of the Applicant's position in the health insurance market is set out in Annexure C. While the Applicant is the fourth largest private health insurer in South Australia, its market share is substantially smaller than the first and second ranked insurer, both of which have a market share several times larger than the Applicant.

The Applicant is unable to precisely quantify its share of the market for dental services in South Australia, but, with only four Applicant Practices, that share is plainly not significant. The Applicant's analysis of its private health fund claims data suggests that the Applicant's South Australian market share could be between four and five percent. However, the Applicant's claim data is likely to overrepresent the Applicant Practices, and underrepresent practices closely aligned with other health fund brands.

² In this context dental services means dental services offered by dentists and does not extend to orthodontic or surgical procedures which are undertaken outside of a general dental practice.

The factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously are discussed below:

- (c) *existing competitors:* The Applicant already competes with other health insurance providers in South Australia. In this respect, the Partner Program with Capped Services will form a key part of ensuring that the Applicant remains highly competitive with those other providers, and potentially spur additional competition in this market. Agreements with Partner Practices are not proposed to be exclusive, so the Applicant does not consider that the Partner Program would limit the ability of other health insurers to offer competitive arrangements potentially even with the very same dental practices.

The Applicant Practices also already compete with other dental practices in South Australia. As the Applicant Practices are all located in metropolitan Adelaide, and the Applicant does not propose to appoint Partner Practices within a 20km radius of those Applicant Practices, the Applicant considers that there is unlikely to be a significant impact on competition as between metropolitan Adelaide dentists.

To the extent that regional South Australian dentists can be considered to be competitors of the Applicant Practices, the Applicant does not believe that the Capped Services offered as part of the Partner Program are likely to have a significant detrimental impact on competition as between regional South Australian dentists. Those dentists will remain free to decide whether to participate in the Partner Program (and therefore offer the Capped Services). For those who do, they will continue to have flexibility as to pricing and services offered, subject only to a cap on prices for the Capped Services, and limitations on charging above their Usual Fee Schedule for other services. For those who do not participate, the offering of 'no-gap' or 'known-gap' Capped Services at competing practices will spur the need to compete either via pricing or other factors such as standard of service.

The ability for Partner Practices to charge amounts higher than the capped prices in exceptional circumstances where necessitated by input costs will avoid any potential distortion of the relevant market. This will limit instances where competing dental practitioners are forced to compete with artificially low prices, and where Partner Practices are effectively operating below cost.

- (d) *likely entry by new competitors:* While they are significantly different markets to each other, the Australian markets for both health insurance providers and dental practices are already highly competitive, with numerous participants in each.

They are both markets which have certain inherent barriers to entry:

- (i) in order to operate effectively as a health insurer, there are a range of regulatory requirements, as well as a degree of scale needed in order to be viable, and systems and processes to integrate with hospitals and other health service providers;

- (ii) in order to operate a dental practice, a dentist must have completed specific tertiary education, and hold appropriate accreditations.

However, the dynamics of those markets demonstrate that those requirements have not prevented and do not prevent new entrants. In any event, the Partner Program's Capped Services will not have an impact on the entry of new competitors into either market.

Indeed, in the dental market, a new operator choosing to participate in the Partner Program may be in a position to more quickly establish itself as a viable business, as an attractive proposition to the Applicant's Members.

- (e) *any countervailing power of customers and/or suppliers*: While there is a disparity of size as between the Applicant and individual dental practices, the Applicant seeks to ensure that this is not manifested as an imbalance of power in respect of the Partner Program by:
 - (i) making the Partner Program entirely optional;
 - (ii) having agreements with each individual Partner Practice; and
 - (iii) allowing Partner Practices to terminate without cause and on short notice.
- (f) *any other relevant factors*: The proposed arrangements will assist the Applicant to remain competitive in the health insurance market.

9. Public Benefits

Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

- 9.1 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.
- 9.2 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.³ 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 and

³ <https://www.aihw.gov.au/reports/dental-oral-health/oral-health-and-dental-care-in-australia/contents/private-health-insurance>

over reported that their dental expenses were partially covered by insurance, and partially paid directly by the patient.

- 9.3 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.
- 9.4 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.
- 9.5 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 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.
- 9.6 Over the longer term, the Applicant 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.
- 9.7 The Applicant's Partner Program will be focussed on regional South Australia, outside the Adelaide metropolitan area. The Applicant 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. The Applicant 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). The Applicant 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.
- 9.8 The proposed conduct would also promote competition between health insurance providers. Given that other health insurance providers already offer similar benefits, to remain competitive the Applicant 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).
- 9.9 The competitive dynamics of the relevant markets (being the health insurance provider market and the dental services market) will not significantly change as a result of whether the Partner Program's Capped Services are introduced and whether authorisation (interim or otherwise) is granted.

- 9.10 The public benefits which will or are likely to arise from the proposed conduct include:
- (a) Increased choice for Members
 - (i) The proposed conduct provides consumers with greater choice of dental service providers. In particular, consumers may be more inclined to visit a new dental practice where they are able to receive price certainty on certain services.
 - (ii) Members remain free to choose whether to obtain known-gap dental services from a Partner Dentist or the Applicant Dentist, or to continue to claim their health insurance benefits with any other dental provider.
 - (b) Supporting dental clinical best practice
 - (i) The Applicant could potentially adopt a different model to achieve similar benefits resulting from the proposed conduct. However, the operational model which has been proposed is preferred by the Applicant as it gives the Applicant the greatest opportunity to promote positive outcomes for Members and the Partner Practices.
 - (ii) Currently, the Applicant only has control over the services provided in the Applicant Practices. This control allows the Applicant to monitor and regulate dental services at its clinics, and to provide better support and services to staff and members.
 - (iii) The Applicant does not have this control over other dental practices. By engaging with the dental practices through its contractual arrangements, the Applicant is given the ability to monitor the relevant dental services and ensure that the providers are operating at a high standard.
 - (iv) If the Applicant were to change its model by moving the Applicant Practices to a separate entity outside of the Applicant's not for profit entity, there will be significantly less benefit for Members attending those practices. This prevents the Applicant from returning value back to Members. The Applicant will also lose a degree of control over the practices.
 - (c) Increased business for dental practices
 - (i) The proposed conduct will allow Partner Practices to attract or retain patients by advertising that they have lower out of pocket costs via the known-gap arrangement with the Applicant. The Applicant hopes that this will assist with the viability of dental practices in regional areas, which are the focus of the Partner Program.
 - (ii) Further, competition is encouraged between dental providers in the same area. Competition between dental practices may lead to non-monetary improvements, such as improving the consumer's experience and enhancement of services.

- (iii) However, dentists remain free to choose whether or not to participate in the program (and therefore cap prices for the Capped Services).
 - (iv) Dentists employed at the Partner Practice remain free to also work at other practices, and they are not obligated to participate in the Partner Program when working in these practices.
- (d) Increased competition between health insurance providers
- (i) The proposed conduct assists the Applicant to remain competitive in the private health insurance market. Competitive providers have their own arrangements with dentists which reduce or cap fees. The Applicant will be in a stronger position and better able to compete more vigorously under the proposed conduct. This is likely to result in cost savings and more advantageous terms for consumers.

10. Public Detriment

Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments

- 10.1 The Applicant submits that the Proposed Conduct is not likely to result in public detriment. The Applicant will continue to face the following competitive market pressures.
- (a) Pressure from other Health Insurance providers
 - (i) As set out at section 13, competitive health insurance providers already have similar initiatives which either cap certain dental services or otherwise limit the amount payable by dental customers. This includes engaging with various dental practices.
 - (ii) The Applicant will not require that dentists in Partner Practices (**Participating Dentists**) are limited to only participating in the Applicant's Partner Program. Participating Dentists will be able to engage with other health insurance providers to also participate in other similar programs.
 - (iii) Further, the proposed conduct will also ensure that the Applicant is able to remain competitive against other health insurance providers offering similar programs.
 - (b) Competition from other dental practices

The proposed conduct does not have the effect of consolidating the Applicant's market power in South Australia. The combination of Participating Dentists being able to enter into agreements with other health insurance providers and other dentists in the market will ensure there are still competitive pressures.

- (c) Reducing competition for Health Partner's Dental Practices
- (i) The ADA raised as a concern in respect of the HCF Authorisation that 'HCF can and will use the Conduct to funnel members towards clinics it owns itself to the detriment of non-DCN dentists'.
 - (ii) As set out above, the aim of engaging Participating Dentists is to better service Members who are located in areas which are not located close to an existing Applicant Practice.
 - (iii) The Applicant has proposed that it will not enter into arrangements with dental practices where those practices are located within 20km radius of the Applicant Practice.
 - (iv) However, the Applicant will not offer Partner Practices exclusivity for their area, and may appoint multiple Partner Practices in close proximity to each other. This will ensure that dental practices within an area (in particular rural areas) will continue to face the same pressures.
 - (v) The Applicant also notes that because its agreements with Partner Practices will require the Capped Services to be offered at *or below* the price offered at Applicant Practices, the Partner Practices will be the same price as *or cheaper than* the Applicant Practices, and the arrangements will accordingly increase competitive pressure on those Applicant Practices.
 - (vi) The Applicant also notes that it is by no means the dominant health insurer in the South Australian market, and any ability it might have to influence the market for dental services will accordingly be severely limited.
- (d) Standards of care
- (i) Other dental practices already face pressures to provide low cost services. This may be from a combination of increased choice of dental providers in their area, similar initiatives offered by competitive health insurance providers and promotional offers offered by competitive dental practices to attract or retain patients. The Applicant accordingly does not consider that the pricing restraints on Capped Services will reduce standards of care. Instead, the Applicant believes that the proactive supply of preventative services will increase standards of care overall.
 - (ii) Agreements with Partner Practices also include specific terms around the quality of care which must be provided, helping to ensure relevant standards continue to be met.
 - (iii) In addition, the ability for Partner Practices to charge higher amounts in specific limited circumstances will avoid situations where dental services might otherwise be impacted by the need to meet relevant caps.

10.2 The potential public detriment is also mitigated by:

- (a) restrictions on location of the proposed conduct to South Australia and not within 20km of an existing Applicant Practice;
- (b) the proposed conduct being voluntary (noting that if authorisation is granted, no dental practice will be compelled to engage in the conduct); and
- (c) the limited scope of the authorisation.

11. Contact details of relevant market participants

11.1 Other health insurers

- (a) As listed at Annexure C, the following private health insurers have market shares in South Australia that are comparable to or larger than the Applicant:
 - (i) Bupa HI Pty Ltd
33 Exhibition Street, Melbourne VIC 3000
 - (ii) Medibank Private Limited
GPO Box 9999, Adelaide SA 5001
 - (iii) The Hospitals Contribution Fund of Australia Limited
GPO Box 4242, Sydney NSW 2001
- (b) Private Healthcare Australia Limited is also a representative body for Australian health insurers, representing health funds (including the Applicant) which collectively represent 97% of people covered by private health insurance. The relevant contact in this respect would be:
 - (i) Dr Rachel David
Chief Executive Officer
Private Healthcare Australia Limited
[REDACTED] or [REDACTED]

11.2 Dental practitioners

- (a) While dental practitioners are plainly relevant market participants, it is likely to be impracticable for the ACCC to deal with practices individually.
- (b) The Australian Dental Association is a non-for-profit professional membership organisation representing a large number of dental practitioners. Its South Australian branch is The Australian Dental Association SA Branch Inc. The relevant contact in this respect would be:
 - (i) Bradley Abraham
Chief Executive Officer
The Australian Dental Association SA Branch Inc.
ceo@adasa.asn.au
PO Box 858, Unley SA 5061

- (c) To the extent that the ACCC may wish to attempt to engage with individual dental practices, the Australian Dental Association website has a directory of its members at <https://www.ada.org.au/Find-a-Dentist>.

12. Confidentiality

- 12.1 The Applicant does not object to this Application or any of the annexures to it being made publicly available.
- 12.2 The Applicant has separately supplied the ACCC with a copy of the template contractual terms for Partner Practices, and is requesting that this agreement is kept confidential by the ACCC and is therefore not publicly released. Health Partners is seeking the agreement to remain confidential for the following reasons:
 - (a) The template agreement has been provided to assist the ACCC in understanding how the agreements will practically work, and reflects the terms entered into with the existing Partner Practice.
 - (b) The details of the contractual mechanisms which are relevant to this Application have been adequately described in the body of this Application. The detailed terms, as are set out in agreement, including the prices applicable to the Capped Services, are commercial in confidence and would be highly prejudicial to the commercial interests of both the Applicant and Partner Practices if made publicly available.

13. Additional information

- 13.1 The model proposed by the Applicant is similar to the existing products offered by competing private health insurers. When participating in the Applicant's Partner Program, dentists will still be able to participate in other programs offered by competing health insurance funds.
- 13.2 In particular, Health Contribution Fund of Australia Limited is authorised to engage in its 'more for teeth' program under ACCC Authorisation number AA1000402. The authorisation sought by the Applicant slightly differs from HCF, as HCF already had a network of partner practices in its 'more for teeth' program and was intending to establish its own practices in certain locations, whereas the Applicant already has dental practices but seeks to add Partner Practices.
- 13.3 Bupa HI Pty Ltd (ABN 81 000 057 590) also offers a similar program where dentists can be part of the Bupa Members First Extras Network. Bupa has 'Bupa' branded dentists however the Applicant understands that these practices are not owned by the health insurance entity. Instead, dental practices are under a separate entity, Dental Corporation Pty Ltd (ABN 92 124 730 874) trading as Bupa Dental.
- 13.4 The Bupa program is described as 'helping our members pay less for most services that are included in their Extras health cover such as most dental, physio, chiro and podiatry.'

- 13.5 Bupa will 'pay more back to our members when they visit a Members First provider'. This is similar to the proposed conduct as the Bupa members will receive higher benefits and have the certainty of knowing how much they'll get back.⁴

⁴ <https://www.bupa.com.au/health-insurance/members-first>

Schedule 1 Applicant details

Item 1	Name	Health Partners Limited ACN 128 282 904 (ABN 43 128 282 904)
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Item 2	Registered Office	Level 3, 101 Pirie Street, Adelaide SA 5000
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Item 3	Representative Contact Details	Peter Campbell, HWL Ebsworth Lawyers Level 14, 83 Pirie Street, Adelaide SA 5000 [REDACTED] [REDACTED] [REDACTED]
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Item 4	Email address for service	[REDACTED]
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Schedule 2 Current Store Locations

Location	Address	Store
Adelaide	Level 1, 101 Pirie Street, Adelaide SA 5000 Australia	Optical and dental
Flinders Park	288 Grange Road, Flinders Park SA 5025	Optical and dental
Goodwood	92 King William Road, Goodwood SA 5034 Australia	Optical only
Modbury	Level 1, 27 Smart Road, Modbury SA 5092	Optical and dental
Morphett Vale	118-120 Main South Road, Morphett Vale SA 5162	Optical and dental

ANNEXURE A

Partner Practice details

Practice	Location	Address
Gawler Dental Clinic Pty Ltd	Gawler (5118)	177 Murray Street, Gawler SA 5118

ANNEXURE B

Capped Services

Item number	Item description
011	Comprehensive oral examination
012	Periodic oral examination
013	Oral examination - limited
014	Consultation
016	Consultation by referral
022	Intraoral radiograph (bitewing or periapical) - 1 film
061	Pulp testing - per visit
072	Photographic records - intraoral
111	Removal of plaque and/or stain
114	Removal of calculus - first visit
115	Removal of calculus - subsequent visit
121	Topical application of remineralizing and/or cariostatic agent
151	Provision of a mouthguard - indirect
221	Clinical periodontal analysis and recording
222	Root planing and subgingival curettage - per tooth
311	Removal of a tooth or part(s) thereof
314	Sectional removal of a tooth
324	Surgical removal of tooth, complete bone
415	Complete preparation of root canal - one canal
416	Complete preparation of root canal - each addt canal
417	Root canal obturation - one canal
418	Root canal obturation - each addt canal
419	Extirpation of pulp - emergency or palliative
455	Add visit for irrigation/dressing of root canal - per tooth
512	Metallic restoration - two surfaces - direct
521	Adhesive restoration - 1 surface - anterior tooth - direct

522	Adhesive restoration - 2 surfaces - anterior tooth - direct
523	Adhesive restoration - 3 surfaces - anterior tooth - direct
524	Adhesive restoration - 4 surfaces - anterior tooth - direct
525	Adhesive restoration - 5 surfaces - anterior tooth - direct
526	Adhesive restoration veneer anterior tooth direct
531	Adhesive restoration - 1 surf - posterior tooth - direct
532	Adhesive restoration - 2 surf - posterior tooth - direct
533	Adhesive restoration - 3 surf - posterior tooth - direct
534	Adhesive restoration - 4 surf - posterior tooth - direct
535	Adhesive restoration - 5 surf - posterior tooth - direct
555	Tooth-coloured restoration - 5 surfaces - indirect
572	Provisional (intermediate/temporary) restoration
577	Cusp capping - per cusp
965	Occlusal splint

ANNEXURE C

Private Health Insurance Market Share in South Australia - Top 5

Health Fund	SA Market Share PHI Policies
BUPA	44.1%
Medibank	23.3%
HCF	9.2%
Health Partners	7.4%
NIB	4.5%

DECLARATION BY APPLICANT

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

General Manager, Private Health Insurance

Office held

Adam McCallum

(Print) Name of authorised person

This 16 day of February 2023.

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.