

Our Ref: 1146532
Your Ref: AA1000636

27 April 2023

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

Dear Ms White

Health Partners Limited – Application for authorisation AA1000636

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

We refer to your email of 19 April 2023 and the further questions raised by the ACCC in respect of the Application.

1. Proposed Conduct

1.1 *Conduct to be authorised*

The Applicant is seeking authorisation to enter into agreements with South Australian dental practices on terms which incorporate the clauses listed in Annexure A to this letter (**Partner Practices**).

The relevant clauses are extracted directly from the draft agreement previously provided to the ACCC on a confidential basis. The Applicant is willing for the ACCC to publish the clauses listed in Annexure A, along with this letter, but seeks that the balance of the agreement remains confidential.

1.2 *Selection of dental practices*

As the Applicant will contract individually with each Partner Practice rather than as part of a multi-party network agreement, nothing in those individual contracts would bind the Applicant to ensure that the dental practices which become Partner

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Practices are greater than 20km from an Applicant owned practice (**Applicant Practice**).

However, the Applicant's plan is to provide a greater geographic coverage for dental services for Members and so the intention is to achieve a spread of sites. Selecting practices so there is a reasonable distance between providers will be consistent with that plan.

Further, the agreement will relate specifically to a dental practice at a particular location, with provisions regarding relocation of that practice ensuring that the Applicant will be notified in advance of any proposed change of address and that a Partner Practice cannot inadvertently move to within close proximity of an Applicant Practice.

1.3 *Current arrangements*

At the date of this letter, the Applicant has only entered into one agreement with Gawler Dental Clinic, located in Gawler, South Australia. While it is intended to enter into arrangements with other Partner Practices, no other agreements are currently under negotiation.

The agreement entered into with the Gawler Dental Clinic (**Operator**) suspends operation of clauses 17 to 26 and clause 30 until the Applicant notifies the Operator that the Authorisation has been granted. Further, these clauses will cease to apply immediately in the event that the conduct is no longer authorised by the ACCC.

For the avoidance of doubt, unless those clauses apply, the Partner Practice is free to charge such prices as it sees fit, and the **Agreed Fees** are of no effect.

2. **Rebate policy**

The rebate represents the proportion of a treatment that the Applicant will pay for a Member's treatment. Generally, the Applicant pays this amount to the service provider or reimburses the Member. The Member is then required to pay any 'gap' between the amount charged by the provider and the rebate provided by the Applicant. From the dental provider's perspective, the provider will receive the same amount for its services, with any change in rebate level only impacting the size of the gap payable by the Member.

A Member will receive a different rebate (**Policy Benefit**) depending on:

- (a) the Member's level of cover under their selected policy;
- (b) any annual limits in the Members policy; and
- (c) the cost of the service charged by the provider.

The Applicant has several extras policies, including a small number of products which are no longer offered to new Members (with existing Members grandfathered on to those policies). Each policy offers a different rebate, depending on the level of cover. More comprehensive policies will have a higher rebate.

Each policy sets the rebate a Member will receive depending on whether the Member attends an Applicant Practice, a Partner Practice or another provider.

Below is an overview, based on the current policies.

(a) Applicant Practice

Where a Member attends an Applicant Practice, the Member will receive the highest rebate. The rebate will typically be a percentage of the total cost of the services, up to the Member's annual limit.

(b) Other practices

For practices other than Applicant Practices or Partner Practices, the rebate for individual services is calculated ahead of time as a maximum **set benefit**. The set benefit will usually be a percentage of a fixed cost, specific to each kind of service.

Notwithstanding the amount charged by the provider, the benefit will not change unless the amount charged is less than the set benefit. This may result in a different gap payment between providers.

A Member may receive a lower rebate from different providers where the amount charged by the practice is **lower** than the set benefit. In these circumstances, the rebate is calculated with reference to the *actual cost* of the service.

(c) Partner Practice

If a Member attends a Partner Practice, the Member's rebate will typically be calculated as a percentage of the total cost of the services, up to the Member's annual limit, rather than as a 'set benefit' as would otherwise be the case for other non-Applicant Practices.

The rebate calculated for Partner Practices under this 'percentage' model would typically be higher than the set benefits that would be provided to other practices.

The percentage rebate at a Partner Practice will be slightly lower than that received at an Applicant Practice, with the precise amounts depending on the Member's level of cover. By way of example, under the Applicant's:

(i) 'Best Extras' policy, a Member would be entitled to:

- (A) a 90% rebate for general dental procedures at an Applicant Practice; or
- (B) an 80% rebate for general dental procedures at a Partner Practice; or

without reference to any annual cap; or

- (ii) 'Good Extras' policy, a Member would be entitled to:
 - (A) a 60% rebate for general dental procedures at an Applicant Practice; or
 - (B) a 50% rebate for general dental procedures at a Partner Practice,

in each case up subject to a combined annual maximum claim limit of \$900 for all general and major dental work.

3. **Minimum Standards**

The ACCC has sought 'further information on the 'minimum standards of dental practices' required for dental practices participating in the Partner Program which go above the mandatory standards already required for dental practices'.

The agreements with Partner Practices have been drafted to uphold, and allow the Applicant to monitor and enforce, relevant standards, rather than impose additional standards. This is consistent with the Application lodged with the ACCC which stated that the agreements would put the Applicant in a position to 'uphold certain minimum standards', 'monitor... and ensure that the providers are operating at a high standard', and 'ensure relevant standards continue to be met'.

In some instances, the relevant standards are in the nature of 'guidelines' that would otherwise be non-binding, with the agreement making compliance with those guidelines mandatory.

The agreements also contain provisions regarding the manner in which the Applicant deals with Members, to ensure that customer service is consistent, predictable and appropriate.

There is also provision in the agreement to allow the Applicant to have oversight over Partner Practices to ensure that they are maintaining best practice.

Audit provisions also give the Applicant the ability to monitor compliance.

The agreement accordingly will not necessarily require practices already operating at a high level to go above and beyond its existing levels of operation, but will give the Applicant contractual mechanisms to uphold those standards which do not exist in the case of other practices more broadly.

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

Kind regards



Peter Campbell

Partner

HWL Ebsworth Lawyers

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Annexure A Clauses

In the clauses in this Annexure:

- *Operator* refers to the counterparty to the agreement, the operator of the Partner Practice;
 - *Practice* refers to the Partner Practice operated by the Operator;
 - *Premises* refers to the premises from which the Partner Practice is operated;
 - *Agreed Fees* refers to fees for dental services set out in a Schedule to the agreement, as varied in accordance with clauses 23 and 24;
 - *Usual Fee Schedule* means the Operator's schedule of usual fees for uninsured patients treated at the Partner Practice;
 - *Benefits* means an amount payable by Health Partners to or for a Member, in respect of expenses incurred by a Member for treatment, in accordance with the terms and conditions of the Health Partners Fund Rules, and *Participating Dental Benefits* refers to the Benefits payable for services provided by Partner Practices, as distinct from the 'Default Dental Benefits' payable in other instances; and
 - *Qualifying Dental Practitioner* means a person who is an AHPRA registered Dental Practitioner, with no conditions or registration requirements on their AHPRA registration.
17. Without limiting the application of clause 22, and subject to ACCC Authorisation, the Operator will ensure Members are charged no more than the lesser of:
- 17.1 any applicable Agreed Fee; or
 - 17.2 the relevant amount from its Usual Fee Schedule,
- for the provision of the services provided by it in connection with this Agreement, except as provided by clause 18.
18. Where clause 17 applies, the only exception to that clause will be where there are unexpectedly higher costs associated with the provision of the service to an individual Member (for example higher than normal lab cost or material costs). In those circumstances, the amounts charged by the Operator to the Member may be increased to cover these additional costs, but only by an amount directly referable to the underlying cost increase, and only on a case-by-case basis. Where requested by Health Partners, the Operator will provide relevant information to support each exception where higher fees have been charged. Where higher costs are applicable to all instances of a service provided by the Operator, those costs should be factored into the Usual Fee Schedule and must not be used as the basis charge increased amounts pursuant to this clause 18.

19. Health Partners will only pay the Participating Dental Benefits to the Operator for treatment provided to Members by Qualifying Dental Practitioners.
20. The Operator will ensure that Members are not charged for treatment until after the treatment has been provided.
21. Members will be responsible for any difference between the Agreed Fees and the Benefits relevant to the Members' level of cover.
22. Where it is the Operator's normal business practice to provide any discounts or benefits to its patients, the Operator will also provide such discounts or benefits or an equivalent amount of the discount or benefits to Members.
23. Health Partners will review the Agreed Fees each financial year. Health Partners may vary the services to which the Agreed Fees apply and/or the applicable Agreed Fees for those services.
24. In the event that the Agreed Fees are varied, Health Partners must provide the Operator with notice of such variation at least 60 days prior to the end of the financial year, and the change will take effect from the commencement of the following financial year on 1 July.
25. The Operator is required to provide Health Partners with a copy of their Usual Fee Schedule.
26. In the event that the Operator varies their Usual Fee Schedule, the Operator must provide Health Partners with a copy of the revised Usual Fee Schedule at least 60 days prior to the revised Usual Fee Schedule taking effect.

30. The Agreed Fees will not apply to billing and services provided by the Operator from any practice other than the Practice, or any location other than the Premises.