



Delta Dental Litigation Resolution

Background

CDA filed the legal action that led to this settlement in August 2013 after learning earlier that year of Delta Dental's plans to reduce reimbursement rates for the Premier Plan by 8 to 12 percent. CDA claimed that Delta Dental's attempt to amend the Participating Dentist Agreements (PDA) to pave the way for this reduction was a breach of its "duty of good faith and fair dealing." CDA also maintained that Delta Dental had not fairly and adequately disclosed its plan to reduce reimbursement rates. In the course of the litigation, CDA discovered that Delta Dental had been imposing additional limitations on provider annual fee filings for participation in the Premier network that we concluded the PDA did not allow.

Settlement Summary

CDA now has a formal proposed settlement agreement on behalf of all California dentists who had a PDA for participation in the Delta Dental Premier network (Premier Providers) any time between January 1, 2011, and December 31, 2016. The settlement agreement has been submitted to the Superior Court of California in San Francisco, which will consider it in a public hearing to ensure that it is fair and adequate to all parties. For more details, please watch for an official Notice of Settlement in the mail next month and read it carefully. All Delta Dental Premier Providers will receive the notice, but the following summarizes key outcomes:

- Delta Dental must provide 120 days' written notice of significant PDA changes to all contracted providers (instead of the 45 days' notice currently required by California law).
- Delta Dental must provide each Premier Provider affected by any attempt to reduce reimbursement fee maximum levels with an individualized analysis of the potential financial impact to his or her practice, based on that dentist's prior 12-month submissions to Delta Dental.
- Delta Dental must also provide 12 days' notice to CDA of changes to PDAs so that CDA can have time to review the changes before they are implemented and be prepared to respond to member inquiries.
- Delta Dental must pay \$65,029,299 to Premier Providers who filed annual fee adjustments with Delta Dental that were below the maximum amounts allowed but that were nonetheless reduced by Delta Dental based on its own self-determined "inflation adjustment percentage" (referred to by Delta Dental as "INAP"). Not every Premier Provider had his or her fees reduced by the INAP, in which case those individuals will not receive any payment. Those dentists who did have their fees limited by this procedure will receive some proportionate retroactive reimbursement.
- None of this settlement amount goes toward attorney fees. In addition to the settlement amount, Delta Dental will pay CDA \$2,350,000 as reimbursement for a portion of the attorney's fees that it expended in pursuing the case. Delta Dental must also pay for the cost of implementing the settlement.

From the beginning, CDA knew it would be incredibly difficult, if not impossible, for members to take legal action against Delta Dental on their own. But under a legal doctrine known as "associational standing," CDA was able to pursue claims on behalf of members, despite Delta Dental's resistance and assertion that PDAs are individual contracts and each dentist must bring his or her claim on an individual basis, an argument the court ultimately rejected. As you know, dental benefit plans generally write their contracts in a manner designed to allow for amendments and fee adjustments and to limit the rights of individual dentists to challenge those contracts. In this case, CDA saw a unique

opportunity to take action and establish that in a proper case a dental association can assert the contract rights of its members and hold a dental benefit plan accountable for actions that appeared to violate California contract law.

Class Action

As part of the settlement agreement, the litigation has been restated in a class action complaint brought on behalf of all Delta Dental Premier Providers from January 2011 through December 2016, and automatically includes all Premier Providers who had a PDA with Delta Dental at any time during that period regardless of whether they were a CDA member. Class members will have 45 days from the mailing of the legal notice to object to and/or opt out of the class action, if desired. The legal notice must be approved by the court, and notices will be sent out afterward — likely in April.

The legal notice will include a copy of the revised PDA for Premier Providers and further details of the class action lawsuit. Following the court's review of the legal notice, there will also be a website where the significant settlement documents will be available for review. There are other changes to the PDA that were not part of the negotiated settlement but that Delta Dental incorporated in this amendment in lieu of a later, separate amendment. Dentists should be aware that although we were able to achieve a positive outcome in this case, this settlement does not prevent Delta from amending the PDA in the future — in fact, dentists could see that happen sometime after the court approval.

According to the agreement, cash payments resulting from the settlement will be paid over a six-month period after the court gives its final approval of the settlement as fair and reasonable to all concerned.

Questions

Following court approval of the legal notice, you may contact the settlement administrator with questions regarding the class action lawsuit or the settlement agreement — directions for doing so will be included in the legal notice. CDA will also provide members with additional information, including a link to the settlement website and an FAQ about the settlement agreement on cda.org/delta.