

REPORT ON
TARGET MARKET CONDUCT EXAMINATION
OF
DELTA DENTAL OF VIRGINIA
AS OF March 31, 2009

Conducted from February 24, 2010
through
February 15, 2011

By

Market Conduct Section
Life and Health Division
BUREAU OF INSURANCE
STATE CORPORATION COMMISSION
COMMONWEALTH OF VIRGINIA

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206
www.scc.virginia.gov/boi

I, Jacqueline K. Cunningham, Commissioner of Insurance of the Commonwealth of Virginia, do hereby certify that the annexed copy of the Market Conduct Examination of Delta Dental of Virginia, conducted at the State Corporation Commissions Bureau of Insurance in Richmond, VA, as of March 31, 2009, is a true copy of the original Report on file with this Bureau, and also includes a true copy of the Company's response to the findings set forth therein, the Bureau's review letter, the Company's offer of settlement, and the State Corporation Commission's Settlement Order in Case No. INS-2011-00158.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of this Bureau at the City of Richmond, Virginia this 30th day of August, 2011.

Jacqueline K. Cunningham
Commissioner of Insurance

REPORT ON
TARGET MARKET CONDUCT EXAMINATION
OF
DELTA DENTAL OF VIRGINIA
AS OF March 31, 2009

Conducted from February 24, 2010
through
February 15, 2011

By

Market Conduct Section
Life and Health Division
BUREAU OF INSURANCE
STATE CORPORATION COMMISSION
COMMONWEALTH OF VIRGINIA

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
I. SCOPE OF EXAMINATION	1
II. COMPANY HISTORY	3
III. MANAGED CARE HEALTH INSURANCE PLANS (MCHIPs).....	5
COMPLAINT SYSTEM.....	5
PROVIDER CONTRACTS	6
IV. ETHICS AND FAIRNESS IN CARRIER BUSINESS PRACTICES.....	7
PROVIDER CONTRACTS	7
PROVIDER CLAIMS	7
V. ADVERTISING	9
VI. POLICY AND OTHER FORMS	12
GROUP CONTRACTS.....	12
INDIVIDUAL CONTRACTS.....	12
RATE FILINGS.....	12
APPLICATION/ENROLLMENT FORMS	13
VII. AGENTS.....	14
LICENSED AGENT REVIEW	14
APPOINTED AGENT REVIEW	14
COMMISSIONS	14
VIII. UNDERWRITING/UNFAIR DISCRIMINATION/INSURANCE INFORMATION AND PRIVACY PROTECTION ACT.....	15
UNDERWRITING/UNFAIR DISCRIMINATION	15
UNDERWRITING REVIEW	15
MECHANICAL RATING REVIEW	16
INSURANCE INFORMATION PRIVACY PROTECTION ACT	16
DISCLOSURE AUTHORIZATION FORMS	16
IX. COMPLAINTS	17

X.	CLAIM PRACTICES	18
	GENERAL HANDLING STUDY	18
	PAID CLAIM REVIEW	18
	DENIED CLAIM REVIEW	18
	TIME SETTLEMENT STUDY	19
	THREATENED LITIGATION	20
XI.	CORRECTIVE ACTION PLAN	21
XV.	ACKNOWLEDGMENT	22
XV.	REVIEW SHEET SUMMARY BY AREA.....	23

COPY

I. SCOPE OF EXAMINATION

The Market Conduct Examination of Delta Dental of Virginia (hereinafter referred to as “Delta Dental”), a dental services plan, was conducted under the authority of various sections of the Code of Virginia, including, but not necessarily limited to, the following: §§ 38.2-200, 38.2-515, 38.2-614, 38.2-1317, and 38.2-1809 of the Code of Virginia (hereinafter referred to as “the Code”) and 14 VAC 5-90-170 A.

A previous Market Conduct Examination covering the period January 1, 2001 through December 31, 2001 was concluded on June 21, 2002. As a result of that examination, Delta Dental made a monetary settlement offer that was accepted by the State Corporation Commission on January 16, 2003 in Case No. INS-2002-01316.

The period of time covered for the current examination, generally, was January 1, 2009 through March 31, 2009. The examination was conducted from February 24, 2010 through February 15, 2011 at the office of the State Corporation Commission’s Bureau of Insurance. The violations cited and the comments included in this Report are the opinions of the examiners.

The purpose of the examination was to determine whether Delta Dental was in compliance with various provisions of the Code of Virginia.

The examination included the following areas:

- Managed Care Health Insurance Plans (MCHIP)
- Ethics and Fairness in Carrier Business Practices
- Advertising
- Policy and Other Forms
- Agents

- Underwriting/Unfair Discrimination/Insurance Information and Privacy Protection Act
- Complaints
- Claim Practices

Examples referred to in this Report are keyed to the number of the Review Sheet furnished to Delta Dental during the examination.

COPY

II. COMPANY HISTORY

Delta Dental of Virginia (Delta Dental) was incorporated under the laws of Virginia on January 6, 1965, for the purpose of operating one or more dental service plans under the provisions of Chapter 11.1 of Title 31 of the Code of Virginia. Delta Dental is a non-stock, nonprofit, dental service plan operating pursuant to the provisions of Chapter 45 of Title 38.2 of the Code. The plan may also assist in the administration of government health care programs in any manner provided for by contract or regulations.

Delta Dental is a member of Delta Dental Plans Associations (DDPA), a national organization of state dental service plans. Delta Dental participates in several national accounts with other dental control plans and provides dental care in accordance with the provisions of the control plan for the employees who reside in Virginia.

Effective January 1, 2001, Delta Dental ceased acting as an agent for individual dentists and became a non-agent, non-stock corporation under § 38.2-4504 of the Code. On August 16, 2005, the plan changed its name from Delta Dental Plan of Virginia to Delta Dental of Virginia. On January 12, 2006, the plan formed Mercury Data Exchange, Inc. ("Mercury"), a wholly-owned, for-profit development stage subsidiary, to develop and provide technology support for the automation, standardization, and real-time exchange of patient data between dental offices and the plan. In September 2006, Delta Dental discontinued marketing its individual dental accident program for students and all Virginia residents. In addition, during 2006, Delta Dental amended and restated its articles of incorporation to permit the creation of a holding company called Corvesta that would be a not-for-profit, non-stock corporation.

Corvesta became the sole member of Delta Dental, but ultimate control of the organization did not change. Delta Dental's participating dentists and the board are its current members and they are also the members of Corvesta. Their rights and privileges as the holding company's members are the same as their rights and privileges as Delta Dental's members.

As of March 31, 2009, Delta Dental had 534,816 Virginia subscribers.

COPY

III. MANAGED CARE HEALTH INSURANCE PLANS (MCHIPs)

Section 38.2-5801 of the Code prohibits the operation of an MCHIP unless the health carrier is licensed as provided in this title. Section 38.2-5802 sets forth the requirements for the establishment of an MCHIP, including the necessary filings with the Commission and the State Health Commissioner.

COMPLAINT SYSTEM

Section 38.2-5804 A of the Code requires that a health carrier establish and maintain for each of its MCHIPs a complaint system approved by the Commission and the State Health Commissioner.

The total population of 10 written complaints received during the examination time frame was selected for review. The review revealed 2 instances where Delta Dental failed to maintain its established complaint system approved by the Commission, in violation of § 38.2-5804 A of the Code. An example is discussed in Review Sheet CP01, where Delta Dental took 67 days to resolve a complaint when the Company's established complaint system requires that "All complaints be resolved with 60 days of receipt." The Company disagreed, stating that § 32.1-137.15 of the Code allows 60 working days from the receipt of required documentation for the results of the appeal process to be provided to the appellant. The examiners would respond that § 38.2-5804 A of the Code requires a company to establish and maintain a complaint system approved by the Commission and that Delta Dental's approved complaint system allows only 60 days from the receipt date for a complaint to be resolved.

PROVIDER CONTRACTS

Section 38.2-5802 C of the Code requires that a health carrier maintain a complete file of all contracts made with health care providers which shall be subject to examination by the Commission.

The review revealed 4 instances where Delta Dental failed to maintain a complete record of a provider contract, in violation of this Code section. An example is discussed in Review Sheet EF04, where the complete contract was not provided to the examiners.

COPY

IV. ETHICS AND FAIRNESS IN CARRIER BUSINESS PRACTICES

Section 38.2-3407.15 B of the Code requires that every provider contract entered into by a carrier shall contain specific provisions, which shall require the carrier to adhere to and comply with minimum fair business standards in the processing and payment of claims for health care services.

PROVIDER CONTRACTS

A sample of 12 from a population of 6,631 executed provider contracts in effect during the examination time frame was selected for review. The contracts were reviewed to determine whether they contained the 11 provisions required by § 38.2-3407.15 B of the Code.

The review revealed 1 contract that failed to include the provision required by § 38.2-3407.15 B 7 of the Code. This example is discussed in Review Sheet EF01. Delta Dental agreed with the examiners' observations.

PROVIDER CLAIMS

Section 38.2-510 A 15 of the Code prohibits, as a general business practice, the failure to comply with § 38.2-3407.15 B of the Code or to perform any provider contract provision required by that section. Section 38.2-3407.15 B of the Code states that every provider contract must contain specific provisions, requiring the carrier to adhere to and comply with minimum fair business standards in the processing and payment of claims. Section 38.2-3407.15 C of the Code states that in the processing of any

payment for claims for health care services, every carrier subject to this title shall adhere to and comply with the standards required under subsection B.

The examiners reviewed 100 provider claims from a total population of 513 under the 12 contracts. The review revealed that Delta Dental was in substantial compliance.

COPY

V. ADVERTISING

A review was conducted of Delta Dental's advertising materials to determine compliance with the Unfair Trade Practices Act, specifically §§ 38.2-502, 38.2-503, and 38.2-504 of the Code, as well as 14 VAC 5-90-10 et seq., Rules Governing Advertisement of Accident and Sickness Insurance.

Where this Report cites a violation of this regulation, it does not necessarily mean that the advertisement has actually misled or deceived any individual to whom the advertisement was presented. An advertisement may be cited for violations of certain sections of this regulation if it is determined by the Bureau of Insurance that the advertisement has the tendency or capacity to mislead from the overall impression that the advertisement may be reasonably expected to create within the segment of the public to which it is directed. (14 VAC 5-90-50)

Although the original scope of the examination did not include advertising, the review of a sales proposal found in an underwriting file revealed the following violations.

14 VAC 5-90-50 B states that advertisements shall be truthful and not misleading in fact or implication. Review Sheets AD01A, AD01B, AD01F, and AD01G discuss the 4 violations of this section. As revealed in Review Sheet AD01A, the advertisement included the language "...our patients avoid the hassles of paperwork." However, patients can be balance billed for coinsurance, deductibles, and non-covered services, which require the patient to maintain billing records from the dental office and explanation of benefit forms from Delta Dental. The Company agreed with the examiners' observations.

14 VAC 5-90-90 C states that the source of any statistics used in an advertisement shall be identified. As discussed in Review Sheets AD01C, AD01E, and AD01H, the review revealed 15 violations of this section. Delta Dental agreed with the examiners' observations in each instance.

14 VAC 5-90-110 states that an advertisement shall not make an unfair or incomplete comparison to a policy of another insurer. Review Sheet AD01B discusses the 1 violation of this section, where the advertisement included the statement "Even our most traditional programs have significant benefits over those of other carriers." The Company disagreed in part stating that the statement is "factually correct" and that the advertisement would be modified to include examples and supporting data demonstrating that the Company has a larger network than the other top 5 dental carriers in Virginia. The examiners would respond that no information was provided to confirm that the statement in question is "factually correct," and that the existence of a larger network does not necessarily demonstrate that a carrier has "significant benefits" over other dental carriers in Virginia.

14 VAC 5-90-120 B states that an advertisement shall not create the impression directly or indirectly that the insurer is approved, endorsed, or accredited by any division or agency of this Commonwealth. Review Sheet AD01D discusses the 1 violation of this section, where it is stated in part that the plan was "Chartered by the General Assembly in 1964," which indirectly creates the impression that the insurer is approved, endorsed, or accredited by the Commonwealth of Virginia. Delta Dental agreed with the examiners' observations.

14 VAC 5-90-160 requires that an advertisement not contain statements that are untrue in fact or by implication misleading with respect to the age or relative position of

the insurer in the insurance business. Review Sheet AD01A discusses the 1 violation of this section, where the advertisement contained the statement “Delta Dental pioneered the first dental plans over 50 years ago.” However, Delta Dental has only been active as a dental/optometric plan in Virginia since 1977 and was not the first carrier in Virginia or the United States to offer dental insurance coverage. The Company disagreed, stating in part that the term “pioneer” means, among other things, to “innovate or participate in the development.” The examiners would respond that “pioneer” used as a verb can be construed to mean “to be the first to open or prepare” or “to take part in the beginnings.” As this use of the word implies that Delta Dental was one of the first carriers in Virginia and the U.S. to offer dental insurance coverage, this advertisement is by implication misleading with respect to the age of the insurer.

SUMMARY

Delta Dental violated 14 VAC 5-90-50 B, 14 VAC 5-90-90 C, 14 VAC 5-90-110, 14 VAC 5-90-120 B, and 14 VAC 5-90-160, placing it in violation of subsection 1 of § 38.2-502 and § 38.2-503 of the Code.

VI. POLICY AND OTHER FORMS

A review of policy forms in use during the examination period was performed to determine if Delta Dental complied with various statutory, regulatory, and administrative requirements governing the filing and approval of policy forms.

Sections 38.2-316 A and 38.2-316 C 1 of the Code prohibit the use of contracts, Evidences of Coverage (EOCs), and any applicable amendments to these forms prior to filing the forms with and receiving approval from the Commission. Other forms, such as the enrollment application, must also be filed with the Commission for approval under §§ 38.2-316 B and 38.2-316 C 1 of the Code. Section 38.2-4514 of the Code requires subscribers to be advised in writing of the benefits and limitations of their dental service plan.

GROUP CONTRACTS

A random sample of 15 from a population of 149 group contracts issued during the examination time frame was selected for review. The review revealed that Delta Dental was in substantial compliance with §§ 38.2-316 A and 38.2-316 C 1 of the Code.

INDIVIDUAL CONTRACTS

The examiners reviewed the total population of 2 individual conversion policies. The review revealed that Delta Dental was in substantial compliance with §§ 38.2-316 A and 38.2-316 C 1 of the Code.

RATE FILINGS

Section 38.2-316 A of the Code sets forth the requirements for the filing of rates and rate changes.

The review revealed that Delta Dental filed rates for its policy forms and rate manuals used during the time frame of the examination, in substantial compliance with this section.

APPLICATION/ENROLLMENT FORMS

Section 38.2-316 B of the Code requires application forms to be filed with the Commission and § 38.2-316 C 1 of the Code requires that the filed applications be approved in writing by the Commission prior to use.

The review revealed that Delta Dental was in substantial compliance.

COPY

VII. AGENTS

The purpose of this review was to determine compliance with § 38.2-4519 of the Code, which states that subscription contracts for dental service plans may be solicited only by licensed dental service agents as provided by Chapter 18 of Title 38.2 of the Code.

The 15 writing agents designated in new business files were reviewed.

LICENSED AGENT REVIEW

Sections 38.2-1822 A and 38.2-4519 of the Code require that a person be licensed prior to soliciting contracts and prohibit an insurer from knowingly permitting an unlicensed person to transact business in Virginia. The review revealed that Delta Dental was in substantial compliance.

APPOINTED AGENT REVIEW

Section 38.2-1833 A 1 of the Code requires an insurer, within 30 days of the date of execution of the first application submitted by a licensed but not yet appointed agent, to either reject such application or appoint the agent. The review revealed that Delta Dental was in substantial compliance.

COMMISSIONS

Section 38.2-1812 A of the Code prohibits the payment of commissions or other valuable considerations to an agent or agency that is not appointed and that was not licensed at the time of the transaction. The review revealed that Delta Dental was in substantial compliance.

VIII. UNDERWRITING/UNFAIR DISCRIMINATION/INSURANCE INFORMATION AND PRIVACY PROTECTION ACT

The examination included a review of Delta Dental's underwriting practices to determine compliance with the Unfair Trade Practices Act, §§ 38.2-500 through 38.2-514, and the Insurance Information and Privacy Protection Act, §§ 38.2-600 through 38.2-620.

UNDERWRITING/UNFAIR DISCRIMINATION

The review was conducted to determine whether Delta Dental's underwriting guidelines were unfairly discriminatory, whether applications were underwritten in accordance with its guidelines, and whether correct premiums were being charged.

UNDERWRITING REVIEW

Groups

A sample of 15 from a total population of 149 group contracts issued during the examination time frame was selected. The review revealed that Delta Dental was in substantial compliance with its procedures and there was no evidence of unfair discrimination.

Individual

The total population of 2 individual conversion contracts issued during the examination time frame was reviewed. The review revealed that Delta Dental was in substantial compliance with its procedures and there was no evidence of unfair discrimination.

MECHANICAL RATING REVIEW

The review revealed that premiums for the issued groups were calculated correctly.

INSURANCE INFORMATION PRIVACY PROTECTION ACT

Title 38.2, Chapter 6 of the Code requires an insurer to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions.

DISCLOSURE AUTHORIZATION FORMS

Section 38.2-606 of the Code sets standards for the content and use of disclosure authorization forms to be used when collecting personal or privileged information about individuals. The review revealed that the disclosure authorization forms used by Delta Dental for underwriting and claims were in substantial compliance with this section.

IX. COMPLAINTS

Section 38.2-511 of the Code requires that a complete record of complaints be maintained to include the number of complaints, the classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. A "complaint" is defined by this section as "any written communication from a policyholder, subscriber or claimant primarily expressing a grievance."

The total population of 10 complaints received during the time frame of the examination was reviewed. The review revealed that Delta Dental maintained a complete complaint record, in substantial compliance with § 38.2-511 of the Code.

COPY

X. CLAIM PRACTICES

The examination included a review of Delta Dental's claim practices for compliance with § 38.2-510 of the Code.

GENERAL HANDLING STUDY

The review consisted of a sampling of closed claims for group and individual dental coverage. Delta Dental's claims are date stamped when received in the Company's mailroom. Claims are then forwarded to the claims department for processing and payment.

PAID CLAIM REVIEW

A sample of 159 was selected from a total population of 164,799 claims paid during the examination time frame. The review revealed that the claims were processed in accordance with Delta Dental's procedures and the contract provisions.

DENIED CLAIM REVIEW

A sample of 138 was selected from a total population of 46,766 claims denied during the examination time frame.

Section 38.2-510 A 6 of the Code prohibits, as a general business practice, not attempting in good faith to make prompt, fair and equitable settlements of claims in which liability has become reasonably clear. The review revealed 1 instance of non-compliance. An example is discussed in Review Sheet CL04, where Delta Dental denied a claim as being outside of the subscriber's eligibility period, but reopened and issued a check for the claim 33 working days after the original receipt date. Delta Dental stated that the subscriber's coverage had been terminated by the group before

the date of service and, after the initial denial processing, the member was added retroactively under COBRA. The examiners would comment that the information regarding the subscriber's eligibility under COBRA was received on February 5, 2009, and the claim was not reprocessed until 27 working days later on March 18, 2009. Therefore, Delta Dental failed to make a prompt settlement when liability was reasonably clear, in non-compliance with this section.

Section 38.2-510 A 14 of the Code prohibits as a general business practice, failing to promptly provide a reasonable explanation of the basis in the insurance policy for denial of a claim. The review revealed 3 instances of non-compliance. An example is discussed in Review Sheet CL01, where a claim was denied with the explanation "An osseous graft placed in an extraction site is indicative of ridge augmentation and is therefore considered a specialized technique...Refer to the exclusion section of your EOC or SPD for more information." However, this specific exclusion is not listed in the member's EOC. The Company disagreed and stated that the procedure was denied based on language in the EOC indicating that a service must demonstrate dental necessity. Based on the explanation provided in the EOB, the member would be unable to determine that the denial was a result of the dental necessity language in the EOC. Therefore, Delta Dental failed to provide a reasonable explanation for denial.

These instances of non-compliance with §§ 38.2-510 A 6 and 38.2-510 A 14 of the Code did not occur with such frequency as to indicate a general business practice.

TIME SETTLEMENT STUDY

The time settlement study was performed to determine compliance with § 38.2-510 A 5 of the Code, which requires that coverage of claims be affirmed or

denied within a reasonable time after proof of loss statements have been completed. The Bureau has determined that a reasonable period of time is 15 working days from the receipt of proof of loss to the date a claim is either affirmed or denied. The term “working days” does not include Saturdays, Sundays, or holidays.

The review revealed that of the 189 claims that were payable to the member, or were the responsibility of the member, 186 were handled within 15 working days. In 3 instances, Delta Dental failed to affirm or deny coverage within 15 working days, in non-compliance § 38.2-510 A 5 of the Code. An example is discussed in Review Sheet CL10.

The failure to comply did not occur with such frequency as to indicate a general business practice.

THREATENED LITIGATION

There were no claims involving threatened litigation received during the examination time frame.

XI. CORRECTIVE ACTION PLAN

Based on the findings stated in this Report, Delta Dental shall:

1. Establish procedures to ensure that it maintains its established complaint system approved by the Commission, as required by § 38.2-5804 A of the Code;
2. Establish procedures to ensure that it maintains a complete record of all provider contracts, as required by § 38.2-5802 C of the Code;
3. As recommended in the prior Report, establish and maintain procedures to ensure that the 11 provisions for ethics and fairness are included in its provider contracts, as required by § 38.2-3407.15 B of the Code;
4. Bring all advertisements into compliance with 14 VAC 5-90-10 et seq., as well as subsection 1 of § 38.2-502 and § 38.2-503 of the Code;
5. As recommended in the prior Report, establish and maintain procedures to ensure that claims are affirmed or denied within a reasonable time, as required by § 38.2-510 A 5 of the Code;
6. As recommended in the prior Report, establish and maintain procedures to ensure the Company attempts in good faith to make prompt, fair and equitable settlements of claims, as required by § 38.2-510 A 6 of the Code; and
7. As recommended in the prior Report, establish and maintain procedures to ensure that reasonable explanations are provided for denied claims, as required by § 38.2-510 A 14 of the Code.

XV. ACKNOWLEDGMENT

The courteous cooperation extended to the examiners by Delta Dental's officers and employees during the course of this examination is gratefully acknowledged.

Gregory Lee, FLMI, CIE and Brant Lyons of the Bureau of Insurance participated in the work of the examination and writing of the Report.

Respectfully submitted,

Carly B. Daniel, AIE, AIRC
Principal Insurance Market Examiner
Market Conduct Section 1
Life and Health Market Regulation Division
Bureau of Insurance

COPY

XV. REVIEW SHEET SUMMARY BY AREA

MCHIPS
§ 38.2-5802 C, 4 violations, EF04, EF07, EF08, EF09
§ 38.2-5804 A, 2 violations, CP01, CP02
ETHICS AND FAIRNESS IN CARRIER BUSINESS PRACTICES
<i>Provider Contracts</i>
§ 38.2-3407.15 B 7, 1 violation, EF01
ADVERTISING/MARKETING COMMUNICATIONS
All Review Sheets are listed in Section V of the Report
CLAIMS PRACTICES
§ 38.2-510 A 5, 3 instances of non-compliance, CL02, CL03, CL04
§ 38.2-510 A 6, 1 instance of non-compliance, CL04
§ 38.2-510 A 14, 3 instances of non-compliance, CL01, CL02, CL03

REPORT ON
TARGET MARKET CONDUCT EXAMINATION
OF
DELTA DENTAL OF VIRGINIA
AS OF March 31, 2009

Conducted from February 24, 2010
through
February 15, 2011

By

Market Conduct Section
Life and Health Division
BUREAU OF INSURANCE
STATE CORPORATION COMMISSION
COMMONWEALTH OF VIRGINIA

FEIN: 54-0844477
NAIC: 55611

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206
www.scc.virginia.gov/boi

April 21, 2011

CERTIFIED MAIL 7005 1820 0007 5460 5596
RETURN RECEIPT REQUESTED

Robert Jagielski
Compliance Officer
Delta Dental of Virginia
4818 Starkey Road
Roanoke, VA 24018-8542

RE: Target Market Conduct Examination Report
Exposure Draft

Dear Mr. Jagielski:

Recently, the Bureau of Insurance conducted a Market Conduct Examination of Delta Dental of Virginia (Delta Dental) for the period of January 1, 2009, through March 31, 2009. A preliminary draft of the Report is enclosed for your review.

Since it appears from a reading of the Report that there have been violations of Virginia Insurance Laws and Regulations on the part of Delta Dental, I would urge you to read the enclosed draft and furnish me with your written response within 30 days of the date of this letter. Please specify in your response those items with which you agree, giving me your intended method of compliance, and those items with which you disagree, giving your specific reasons for disagreement. Delta Dental's response(s) to the draft Report will be attached to and become part of the final Report.

Once we have received and reviewed your response, we will make any justified revisions to the Report and will then be in a position to determine the appropriate disposition of this matter.

Thank you for your prompt attention to this matter.

Yours truly,

Carly B. Daniel
Principal Insurance Market Examiner
Market Conduct Section 1
Life and Health Division
Bureau of Insurance
(804) 371-9492

CBD:mhh
Enclosure
cc: Althelia Battle

May 20, 2011

Carly B Daniel
Principal Insurance Market Examiner, Section 1
Bureau of Insurance
Life and Health Division
1300 E. Main Street, Tyler Building
Richmond, VA 23218

RE: Target Market Conduct Examination Report

Dear Ms. Daniel:

We are in receipt of your report dated April 21, 2011. Our response to the items identified in the report is stated below.

Complaint System

Issue identified: Two (2) instances where Delta Dental of Virginia (DDVA) failed to maintain is established complaint system approved by the Commission by failing to respond within the time frame established in the complaint system..

Response: DDVA respectfully disagrees that it failed to resolve the complaint within the time frame established in the complaint system. The approved complaint system indicates the complaints will be resolved within 60 days. The log supplied in this Market Conduct Exam tracked complaints in terms of working days, which is consistent with our understanding of prevailing industry practice and with what is specified in Section § [32.1-137.15](#). Please note Section § [32.1-137.15](#) states, in part, that each entity shall establish an appeals process and that notification of the results of the appeal process shall be provided to the appellant no later than sixty working days after receiving the required documentation. DDVA has re-filed its complaint system to specify “working days”.

Provider Contracts

Issue Identified: Four (4) instances where DDVA failed to maintain a complete record of a provider contract.

Response: DDVA agrees in part that we failed to maintain a complete record of the signature page for one provider on a contract. DDVA disagrees that we failed to maintain a complete record of a provider contract for others cited. We maintain copies of what the provider faxes

and the remainder of the contract sections we obtained from (a) the electronic version of the master file

Issue Identified: One (1) instance where a provider contract failed to include the provisions required in §38.2 3407.15 B 7.

Response: DDVA agrees in part with the examiner's observations that the provider contract identified did not contain all of the language required by §38.2 3407.15 B 7. The provision: "Notwithstanding the provisions of paragraph 7 of this Section Two, with respect to provider contracts entered into, amended, extended, or renewed on or after July 1, 2004, DDPV will not impose any retroactive denial of payment or in any other way seek recovery or refund of a previously paid claim unless DDPV specifies in writing the specific claim or claims for which the retroactive denial is to be imposed or the recovery or refund is sought. The written communication will also contain an explanation of why the claim is being retroactively adjusted" was inadvertently omitted from this provider contract.

Intended Method of Compliance: DDVA will either amend or issue a new contract to include the statutory requirements with the providers at issue and will ensure that statutory requirements are met in all new contracts.

Advertising

Issue Identified: Four (4) violations concerning advertisements that could potentially be misleading in fact or implication.

Response: DDVA agrees with the examiner's observations all or part of the advertisements could potentially be construed to be misleading.

Issue Identified: Fifteen (15) violations of sources of statistics not being used.

Response: DDVA agrees with examiner's observations. DDVA will either delete the statistic or source the statistic being used in the materials.

Issue Identified: One (1) violation concerning advertisements that could potentially be construed as being an unfair or incomplete comparison to a policy of another insurer.

Response: DDVA agrees in part with the examiner's observations that the statement "an advertisement shall not make an unfair or incomplete comparison to a policy of another insurer". While we believe statement "Even our most traditional programs have significant benefits over

other carriers” is factually correct, we failed to provide supporting data. Please note that page 10 of the report, 2nd paragraph, 4th line, second “programs” should be “benefits.”

Issue Identified: One (1) violation that an advertisement shall not create the impression that the issuer is approved, endorsed, or accredited by any division or agency of this Commonwealth.

Response: DDVA agrees in part with the examiner’s observations that the statement DDVA was “chartered by the General Assembly in 1964” is incorrect. We respectfully disagree that the statement that DDVA was “created over 50 years ago” is misleading as it is factually correct.

Intended Method of Compliance: DDVA will modify or delete the language in its advertising materials in accordance with its response to the findings.

Policy and Other Forms

Page 13 “Explanation of Benefits (EOB)”: Section 38.2-3407.4 A does not apply to dental services plans. See Section 38.2-4509. The reference to this section should be deleted. DDVA complies with the applicable requirements of 38.-316, which you will note does not mention EOBs.

Claim Practices

Issue Identified: One (1) instance of non-compliance concerning not attempting in good faith to make prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

Response: DDVA respectfully disagrees it failed to make prompt, fair and equitable settlement. The initial claim decision was denied appropriately based on the eligibility information previously provided by the group and on record at the time the claim was processed. The claim was re-submitted and processed accordingly under the member’s new coverage information.

Issue Identified: Three (3) instances of non-compliance for failing to promptly provide a reasonable explanation of the basis in the insurance policy for denial of a claim.

Response:

DDVA agrees with the examiner’s observations. It will ensure that all denials are properly referenced to specific exclusions in the EOC, and, further, has reviewed the instances with the Director of Operations and will conduct refresher training on claim processing procedures.

Time Settlement Study

Issue Identified: Three (3) instances where DDVA failed to affirm or deny coverage within fifteen (15) working days.

Response: DDVA agrees that it failed to affirm or deny coverage within fifteen (15) working days.

Intended Method of Compliance: DDVA has reviewed the instances with the Director of Operations and will conduct refresher training on claim processing procedures.

Corrective Action Plan

DDVA agrees to implement the corrective action plan set forth in the report.

Sincerely,



Robert Jagielski, JD

COPY



June 24, 2011

**CERTIFIED MAIL 7005 1820 0007 5460 5725
RETURN RECEIPT REQUESTED**

Robert Jagielski
Compliance Officer
Delta Dental of Virginia
4818 Starkey Road
Roanoke, VA 24018-8542

RE: Response to Delta Dental of Virginia for the Target Market Conduct Examination Exposure Draft

Dear Mr. Jagielski:

The examiners have received and reviewed Delta Dental of Virginia's (Delta Dental) response to the Draft Report dated May 20, 2011. This response will only address those areas of the response where Delta Dental disagreed with the findings and corrective actions of the Report or where, upon further review, the examiners decided to modify our findings.

Delta Dental – Corrective Action Plan

1. Establish procedures to ensure that it maintains its established complaint system approved by the Commission, as required by § 38.2-5804 A of the Code;

The examiners acknowledge Delta Dental's disagreement with the observations regarding the resolution time for complaints. As the approved complaint system during the examination time frame requires that complaints be resolved within 60 days, the complaints referenced in Review Sheets CP01 and CP02 were not processed in accordance with the time frame set forth in this approved system. The examiners acknowledge the Company's efforts to re-file its complaint system; however, actions taken subsequent to the examination will not impact the findings in the Report. The Report appears correct as written.

2. Establish procedures to ensure that it maintains a complete record of all provider contracts, as required by § 38.2-5802 C of the Code;

The examiners acknowledge Delta Dental's disagreement with 3 out of the 4 violations of this Section. In the case of Review Sheets EF07, EF08, and EF09, the missing

portions of the provided contracts were not sufficiently documented by either the record of faxed pages from the provider or the electronic master file. The Report appears correct as written.

3. As recommended in the prior Report, establish and maintain procedures to ensure that the 11 provisions for ethics and fairness are included in its provider contracts, as required by § 38.2-3407.15 B of the Code;

The Company has stated that it “agrees in part” with the observations regarding the failure to include the provision required by § 38.2-3407.15 B 7 of the Code in one instance. As your response does not indicate the part with which Delta Dental disagrees, the examiners cannot comment on the Company’s disagreement. Delta Dental’s response to Review Sheet EF01 indicated that the Company was in agreement with the observation that the provider contract in question does not include the language required by § 38.2-3407.15 B 7 of the Code. The Report appears correct as written.

4. Bring all advertisements into compliance with 14 VAC 5-90-10 et seq., as well as subsection 1 of § 38.2-502 and § 38.2-503 of the Code;

Delta Dental has stated that it agrees in part with the observations that the statement “Even our most traditional programs have significant benefits over other carriers” is an unfair comparison to the policies or benefits of other dental insurers. While you have indicated that the supporting data was not included in the advertisement, no documentation has been provided in support of the Company’s assertion that the statement in question is “factually correct.” With respect to the Bureau’s position on this issue, the Report appears correct as written. In regard to page 10 of the Report, “programs” will be corrected to read “benefits” as noted in your response. The revised page is enclosed for your review.

The Company has stated that it agrees in part with the examiners’ observations regarding 14 VAC 5-90-120 B. Delta Dental agrees with the observations found in Review Sheet AD01D concerning the statement that the plan was “chartered by the General Assembly in 1964.” The Company indicated disagreement with the statement that Delta Dental was “created over 50 years ago.” Please be advised that the statement referenced within this Review Sheet is “Delta Dental was created by the Virginia Dental Association over 40 years ago...,” and that no violations of 14 VAC 5-90-120 B were cited in connection with the statement referenced in your response.

The only reference to any statement including the words “50 years ago” involves the observations found in Review Sheet AD01A regarding the language “Delta Dental pioneered the first dental plans over 50 years ago.” As Delta Dental has only been active as a Dental/Optometric plan in Virginia since 1977 and it was not the first carrier in Virginia or the United States to offer dental insurance coverage, the statement in question is misleading. The Report appears correct as written.

Policy and Other Forms

In regard to Delta Dental's statement concerning page 13 of the Report, the reference to § 38.2-3407.4 A of the Code will be deleted. While Delta Dental is not subject to this Section regarding filing explanation of benefits forms for approval, please be advised that the company is not exempt from the disclosure requirements set forth in §§ 38.2-510 A 10, 38.2-510 A 14, and 38.2-514 B of the Code. The revised page is enclosed for your review.

6. As recommended in the prior Report, establish and maintain procedures to ensure the Company attempts in good faith to make prompt, fair and equitable settlements of claims, as required by § 38.2-510 A 6 of the Code;

The examiners acknowledge Delta Dental's disagreement with the observations regarding the failure to make a prompt, fair and equitable settlement. However, after the initial denial, the claim in question was not appropriately reprocessed until 27 working days after the receipt of additional information. As this claim was not promptly settled upon reprocessing, the Report appears correct as written.

A copy of the revised pages (Table of Contents, 10, and 13) is attached and these are the only substantive revisions we plan to make before the Report becomes final.

On the basis of our review of the entire file, it appears that Delta Dental has violated the Unfair Trade Practices Act, specifically subsection 1 of § 38.2-502 and § 38.2-503 of the Code, as well as 14 VAC 5-90-50 B, 14 VAC 5-90-90 C, 14 VAC 5-90-110, 14 VAC 90-120 B, and 14 VAC 5-90-160 of Rules Governing Advertisement of Accident and Sickness Insurance.

In addition, there were violations of §§ 38.2-3407.15 B 7, 38.2-5802 C, 38.2-5804 A of the Code.

Violations of the above sections of the Code can subject Delta Dental of Virginia to monetary penalties of up to \$5,000 for each violation and suspension or revocation of its license to transact business in the Commonwealth of Virginia.

In light of the foregoing, this office will be in further communication with you shortly regarding the appropriate disposition of this matter.

Very truly yours,

Carly B. Daniel, AIE, AIRC
Principal Insurance Market Examiner
Market Conduct Section 1
Life and Health Market Regulation Division
Bureau of Insurance

CBD/mhh
cc: Althelia Battle

530054

Delta Dental of Virginia
4818 Starkey Road
Roanoke, VA 24018-8542

DEPARTMENT OF INSURANCE
COMMISSIONER

11 AUG -2 AM 9:33

Althelia P. Battle, FLMI, HIA, AIE, MHP, AIRC, ACS
Deputy Commissioner
Bureau of Insurance
Post Office Box 1157
Richmond, VA 23218

RE: Alleged Violations of the Unfair Trade Practices Act, specifically subsection 1 of § 38.2-502 and § 38.2-503 of the Code, as well as 14 VAC 5-90-50 B, 14 VAC 5-90-90 C, 14 VAC 5-90-110, 14 VAC 90-120 B, and 14 VAC 5-90-160 of Rules Governing Advertisement of Accident and Sickness Insurance and §§ 38.2-3407.15 B 7, 38.2-5802 C, 38.2-5804 A of the Code.

Dear Ms. Battle:

This will acknowledge receipt of your letter dated July 20, 2011, concerning the above-captioned matter.

Delta Dental wishes to make a settlement offer for the alleged violations cited above. Enclosed with this letter is a check (certified, cashier's or company) in the amount of \$5,000, payable to the Treasurer of Virginia. The Company further understands that as part of the Commission's Order accepting the offer of settlement; it is entitled to a hearing in this matter and waives its right to such a hearing, and agrees to comply with the Corrective Action Plan contained in the Target Market Conduct Examination Report as of March 31, 2009.

This offer is being made solely for the purpose of a settlement and does not constitute, nor should it be construed as, an admission of any violation of law.

Yours very truly,



Company Representative



Date

Enclosure (check)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, AUGUST 9, 2011

CLERK'S OFFICE

2011 AUG -9 P 3:47

STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

CASE NO. INS-2011-00158

DELTA DENTAL OF VIRGINIA,
Defendant

SETTLEMENT ORDER

Based on a target market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of a dental plan organization in the Commonwealth of Virginia, in certain instances, has violated subsection 1 of § 38.2-502 and § 38.2-503 of the Code of Virginia, as well as 14 VAC 5-90-50 B 14, 14 VAC 5-90-90 C, 14 VAC 5-90-110, 14 VAC 5-90-120 B, and 14 VAC 5-90-160, by failing to comply with advertising requirements; violated § 38.2-3407.15 B 7 of the Code of Virginia by failing to comply with the requirements for provider contracts and claims; and violated §§ 38.2-5802 C and 38.2-5804 A of the Code of Virginia by failing to comply with MCHIP requirements.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to

110810256

the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Five Thousand Dollars (\$5,000), waived its right to a hearing, and agreed to comply with the Corrective Action Plan contained in the Target Market Conduct Examination Report as of March 31, 2009.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Robert Jagielski, Compliance Officer, Delta Dental of Virginia, 4818 Starkey Road, Roanoke, Virginia 24018-8542; and a copy shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Althelia Battle.

True Copy
Date:

Joel M. Peck
Clerk of the
State Corporation Commission