

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF INSURANCE

MASSACHUSETTS DENTAL SOCIETY,

Petitioner,

v.

DENTAL SERVICE OF MASSACHUSETTS,
INC.,

Respondent.

Docket No. B2017-01

PRE-HEARING MEMORANDUM OF MASSACHUSETTS DENTAL SOCIETY

I. INTRODUCTION

Dental Service of Massachusetts, Inc. (“DSM” or “Ch. 176E Delta”), the only nonprofit dental service corporation ever organized under Chapter 176E, has announced the divestiture of its business to a wholly-owned for-profit subsidiary organized under Chapter 175 to escape the oversight of its enabling statute. In the process, DSM has coerced its massive provider network – some 95% of Massachusetts dentists – to contract with the for-profit subsidiary or face exclusion from its own legacy plans as well as all new plans.

The Massachusetts Dental Society (“MDS”) has requested a hearing with the Division of Insurance (“Division”) to review this historical flight of the Commonwealth’s only dental service corporation from its statutory home. In the guise of a new contract offer, wrapped in ultimatums and threats, DSM and its subsidiary, DSM Massachusetts Insurance Company, Inc. (“DMIC” or “Ch. 175 Delta”), purport to reconstitute the regulatory environment in which dentists contract with Delta and treat patients. Delta’s exit from Chapter 176E – dragging its Chapter 176E providers along with it – epitomizes a dispute or controversy worthy of review by the Division under Chapter 176E.

II. BACKGROUND

A. The Commonwealth's Only Nonprofit Dental Service Corporation

Chapter 176E authorizes the organization of dental service corporations “[f]or the purpose of establishing, maintaining, and operating a nonprofit dental service plan.” Since its creation in 1966, Ch. 176E Delta has operated as the only dental service corporation in Massachusetts. Its articles of organization state as its purpose: “to establish, maintain and operate a non-profit dental service plan under the provisions of General Laws, Chapter 176E.” (Exhibit A). Approving Ch. 176E Delta’s articles of organization, the Commissioner certified that “said incorporators and directors are of good repute, and intend in good faith to operate the proposed corporation.” (Exhibit B).

Chapter 176E grants Ch. 176E Delta the status of a charitable corporation entitled to unique immunities and exemptions, including exemptions from the insurance laws, “except as otherwise provided in this chapter,” and state and local taxation. M.G.L. c. 176E, § 14. In return, Chapter 176E subjects Ch. 176E Delta to “comprehensive public supervision.”¹ It is this comprehensive public supervision – the price of subsidizing a business for over 50 years with tax relief – that Delta now wants to escape.

Section 4 requires the Commissioner’s approval of contracts between Ch. 176E Delta and participating providers and of the fees paid to participating providers. It also requires public hearings on the fees paid to participating providers or the method of determining those fees. Section 7 guarantees “every registered dentist” the right to contract with Ch. 176E Delta. Section

¹ See Blue Shield of Massachusetts, Inc. v. Board of Review in Div. of Ins., 22 Mass. App. Ct. 160, 166 (1986) (“The design of c. 176B is to authorize the organization of nonprofit medical service corporations which, in return for exemption from taxes and other benefits, are subject to comprehensive public supervision.”); Nelson v. Blue Shield of Massachusetts, Inc., 377 Mass. 746, 750 (1979) (“G.L. c. 176B establishes a comprehensive scheme for the public supervision of medical service corporations.”). The design of Chapter 176B (nonprofit medical service corporations) is fundamentally similar to that of Chapter 176E; and the benefits bestowed by M.G.L. c. 176B, § 14 are identical to those bestowed by M.G.L. c. 176E, § 14.

9 subjects Ch. 176E Delta to inspection and examination by the Commissioner at least once every three years. Section 11 regulates the salaries payable to Ch. 176E Delta's officers and directors. Section 13 vests the Commissioner with authority to enjoin Ch. 176E Delta from transacting business for failing to comply with its charter, operating for profit, or violating any provision of law, among other grounds.

Ch. 176E Delta has prospered under this regime. It has become the Commonwealth's largest dental benefits company. It insures over 5,000 Massachusetts-based companies and 2.2 million members. It contracts with over 95% of the Commonwealth's dentists. At last examination in 2013, it had over \$364 million in admitted assets and over \$280 million in capital and surplus. Its president (apparently receiving not a dollar in salary from Ch. 176E Delta) received over \$7 million in salary and other income in fiscal year 2015 from one of Ch. 176E Delta's wholly-owned for-profit subsidiaries, Denta Quest, LLC. It presides over a small empire of for-profit and nonprofit subsidiaries and affiliates operating in Massachusetts and elsewhere. It has captured a dominant share of the state's insurance marketplace.

B. Ch. 176E Delta's Premier Provider Contracts

Ch. 176E Delta's "Premier" network represents its largest provider network. Delta Dental's Massachusetts website – which holds out "Delta Dental" to the public without differentiation between Ch. 176E Delta and Ch. 175 Delta – advertises the Premier plan as presenting the "most choice for members" with 96% of Massachusetts dentists participating in the network. It is a managed fee-for-service plan.

The contracts between Ch. 176E Delta and its Premier providers inhabit the Chapter 176E regime. Reflecting the approval requirements of Section 4, a recent version of the Premier contract states that "Delta Dental payments to participating dentists are on a variety of bases of

compensation, which have been approved by the Board of Directors and the Commissioner of Insurance.” It also states that “[t]he percent or percentages by which payments to dentists are reduced are approved by the Commissioner of Insurance and are stated in the Delta Dental Rules and Regulations.” The contract’s Outline of Reimbursement is prefaced with the statement that it “has been approved and is on file with the Massachusetts Division of Insurance.”

Reflecting the “every registered dentist” eligibility mandated by Section 7, Ch. 176E Delta’s 2016 Premier rules and regulations provide that “any dentist registered to practice in the Commonwealth may become a participating dentist by completing an application in the form prescribed from time to time by the corporation and by entering into the Participating Dentist’s Agreement as that agreement may from time to time be amended.”

C. Migration to Ch. 175 Delta

In December 2016, Premier providers received a letter from “Delta Dental.” The letter casually stated that “[b]eginning in 2017” – i.e., in several weeks – “administration of *all* Delta Dental of Massachusetts business will be consolidated into DMIC.” It continued: “the Delta Dental PPO and Delta Dental Premier networks” – i.e., those networks built over generations of contracting with Ch. 176E Delta – “are being consolidated into a new single network within DMIC, called PPO and Premier.” Providers who did not join the new combined PPO and Premier network risked “disruption” and “interruption” to their status as a Premier provider. Providers were given until January 6, 2017 to sign the new DMIC contract “to ensure you are included in the directories for business administered by DMIC.” (Exhibit C).

The letter did not explain why a provider who continued to contract with Ch. 176E Delta but decided not to contract with Ch. 175 Delta would face disruption or interruption to their current status. A “Frequently Asked Questions” provided by “Delta Dental” revealed a bit more

detail. It explained that “[w]e are beginning the process of transitioning *all* business to DMIC” and “[b]ecause DSM and DMIC are different companies, a provider agreement with each is required for you to remain in network.” (Exhibit D). To make sure that Ch. 176E Delta’s massive network of providers would run to join Ch. 175 Delta’s networks and support Ch. 175 Delta’s products, providers were threatened with the loss of their Premier status if they did not participate in Ch. 175 Delta’s combined PPO and Premier network. The FAQ warned holdouts that “this means that once all of our members are fully transitioned, you will be non-participating with *all* Delta Dental of Massachusetts business.” Delta projected the full transition of products to Ch. 175 Delta to occur “over the next several years.” For good measure, Delta threatened providers with a “one-year lockout” if they did not sign the Ch. 175 Delta contract. Post-transition, a locked-out provider would have no access to any of Delta’s subscribers.

MDS immediately requested an extension of the contract deadline and Delta agreed to extend it to January 30, 2017. The Division also demanded better communication from Delta about the proposed changes. Delta sent a new letter to providers in January “to clarify any confusion arising after our December letter.” (Exhibit E). This letter revealed more about the “transition” from Ch. 176E Delta to Ch. 175 Delta. It explained that “Delta Dental of Massachusetts will begin shifting its marketing focus away from the Delta Dental Premier and Delta Dental PPO business offered under DSM to products offered under DMIC.” Neither the letter nor the proposed contract identified the products to be offered by DMIC. The letter concluded in bold text: “**please submit your DMIC contract by February 28, 2017 in order to be guaranteed admission to the DMIC’s new network.**” In a separate letter to MDS, Delta warned that not only would dentists who failed to sign the Ch. 175 Delta contract by the deadline not have guaranteed admission to the new network, but those who did sign the new contract but

later exercised their contractual termination right would face a “one-year waiting period” before they could apply for readmission.

D. Ch. 175 Delta’s Provider Contracts

Delta has laid bare the reason why it wants to transition Ch. 176E Delta’s business to Ch. 175 Delta. In its January 27, 2017 letter to the Division, Delta stated: “Under c. 176E’s provisions, DSM is hampered in its ability to offer similar products on an even playing field.” By “similar products,” Delta means PPO products whose provider reimbursement rates are spared Commissioner oversight.

Ch. 175 Delta’s provider contracts leverage this freedom from oversight. Unhampered by M.G.L. c. 176E, § 4, the new contract provides that Ch. 175 Delta may amend the new PPO fee schedule – already reducing provider fees by 20 to 25% – “in the Company’s sole discretion from time to time.” Unhampered by M.G.L. c. 176E, § 7, Ch. 175 Delta does not guarantee every registered dentist the right to contract with it; in fact, Ch. 175 Delta has reserved the right to exclude from its networks any dentist who did not sign the Ch. 175 Delta contract by February 28, 2017.

Significantly, M.G.L. c. 176E, § 7 protects the sanctity of the patient-provider relationship from outside interference. It prohibited Ch. 176E Delta from placing restrictions “upon its participating dentists as to methods of diagnosis or of treatment.” Similarly, it prohibited Ch. 176E Delta from influencing or attempting to influence “a subscriber or a covered dependent in his choice of a participating dentists.” The original version of the Ch. 175 Delta contract – the version presented to dentists for signature – trampled over the patient-provider relationship in the name of keeping business in-network. It required participating providers “to refer patients who require covered specialty services (oral surgery, endodontics, prosthetics, and

orthodontics) that Participating Provider does not perform, only to dental specialists designated within the network established by Company.” After MDS challenged this requirement in its January 20, 2017 hearing request, Delta informed providers by letter dated May 1, 2017 – months after dentists had signed the contract – that “the specialist referral language is being removed from the DMIC Provider Agreement.” (Exhibit F).² Ch. 175 Delta continues to interfere with patient-provider relationships by barring otherwise registered and eligible providers from its new networks.

E. Ch. 175 Delta’s Total Choice PPO

Delta herded Ch. 176E Delta’s providers into Ch. 175 Delta’s combined PPO and Premier network by threatening them with disruption to their Premier practice. It appears, however, that Ch. 175 Delta will harness this combined network in service of a PPO product. In July 2017, the Division approved Ch. 175 Delta’s “Total Choice PPO” large and small group product. The product application identifies the “PPO and Premier Network (New Network)” as the Total Choice PPO network.

Delta’s website promotes Total Choice PPO as “the best of Delta Dental of Massachusetts with new benefits and a lower cost for you and your employees.” It claims that “Total Choice PPO offers the largest PPO network in Massachusetts, with more than 4,300 unique providers,” or “more than 80% of all dentists in the Commonwealth.” In its May 1, 2017 letter to providers, Delta stated that “the DMIC PPO and Premier network contracting is now complete, and we are pleased to announce that more than 80% of the dentists enrolled in the Delta Dental of Massachusetts Premier network have joined the new network.” (Exhibit F). Delta even advertises to the public that “we have negotiated great discounts with our providers and

² To MDS’s knowledge, Ch. 175 Delta has not presented providers with a formal contract amendment confirming the removal of this offensive language.

your employees get the Delta Dental Discount every time they get covered care in the network.” Total Choice PPO is evidently poised to become Ch. 175 Delta’s flagship product. It is backed by the conscription of Chapter 176E’s Premier network. It is the for-profit conversion of a non-profit dental service plan.

III. PROCEDURAL POSTURE

MDS requested a hearing on the transition of Ch. 176E Delta’s business by petition dated January 20, 2017. The petition invoked the provisions of M.G.L. c. 176E “generally” and Section 12 “in particular.” Section 12 provides that “any dispute or controversy arising between a dental service corporation and any participating dentist ... may within thirty days after such dispute or controversy arises be submitted by any person aggrieved to a board serving in the division of insurance...” MDS asserted the standing of a “person aggrieved” by virtue of representing 80% of Massachusetts dentists.

DSM and DMIC jointly responded by letter dated January 27, 2017. They challenged the Division’s authority to hear this dispute by characterizing it as one involving DMIC, the Chapter 175 entity, and not DSM, the Chapter 176E entity.

MDS filed a subsequent letter on February 3, 2017 and Delta filed a subsequent letter on February 10, 2017. MDS renewed its hearing request by letter dated June 29, 2017.

By letter dated July 13, 2017, the Chair of the Division’s Board of Review acknowledged that “[i]t is evident that a dispute or controversy has arisen between the MDS and Delta Dental; among the issues on which they disagree is whether the Board has jurisdiction to hear that dispute or controversy.” The letter stated that the Board would hold a hearing “initially for the sole purpose of determining the question of jurisdiction.” By letter dated August 1, 2017, the Board further defined the jurisdictional issues set for hearing: timeliness, standing, statutory

authority, and the forms of relief each party seeks in the proceeding. The Board ordered the parties to submit memoranda and supporting documents on these matters.

The Commonwealth's only dental service corporation is ceding its business to its for-profit subsidiary and coercing its providers to underwrite the success of Ch. 175 Delta's product offerings. If an event ever demanded public review under Chapter 176E, this would be it. Section IV.A addresses the statutory authority for a full hearing on MDS's petition, Section IV.B the remedies sought, Section IV.C the associational standing of MDS, and Section IV.D the timeliness of this request.

IV. THE DIVISION SHOULD HOLD A HEARING ON THE DELTA TRANSITION AND TREATMENT OF PROVIDERS

A. The Division's Broad Review Powers to Hold a Hearing

i. *The Division's Oversight of the Ch. 176E Regime Itself*

Chapter 176E bestows upon dental service corporations the same exemptions and benefits bestowed upon medical service corporations by Chapter 176B. Just like Chapter 176B, therefore, Chapter 176E establishes a "comprehensive scheme for the public supervision" of these charitable corporations. Nelson, 377 Mass. at 750. Ch. 176E Delta – the sole dental service corporation to have availed itself of the privileges granted by Chapter 176E – is relinquishing its providers, subscribers, and goodwill to Ch. 175 Delta to launch new products in a deregulated environment. Chapter 176E appoints the Commissioner the steward of the statutory regime that created and governs Ch. 176E Delta. See, e.g., M.G.L. c. 176E, §§ 2, 4-6, 8, 9, 10, 12, 13, 16. This role most assuredly includes the power to review abuses of the regime itself.

Explicit in the Chapter 176E regime is the obligation of a dental service corporation to demonstrate an intent to operate in good faith upon formation. Section 2 provides that "the commissioner shall not approve the articles of organization of such a corporation until he is

satisfied by such examination as he may make and such evidence as he may require that the incorporators are of good repute and *intend in good faith to operate* the corporation ...” Implicit in this regime is the obligation of a dental service corporation to continue to operate in good faith. Section 8 requires a dental service corporation to file annual statements verified by at least two corporate officers. Section 9 exposes a dental service corporation to regular inspection and vests the Commissioner with authority to “summon and examine under oath its officers, agents, employees and all other persons in relation to its affairs and condition.”

Accordingly, Ch. 176E Delta’s recent activities are not immune from Division review. Delta’s recent announcements of imminent plans to transition “all business to DMIC,” “to change our focus in 2017,” and to “begin shifting its marketing focus away from the Delta Dental Premier and Delta Dental PPO business offered under DSM to products offered under DMIC” repudiate a good faith intent to operate Ch. 176E Delta as a dental service corporation.

Section 13 reinforces the Commissioner’s role in preserving the integrity of the statutory regime. It empowers the Commissioner to seek an injunction if, among other misconduct, dental service corporations are “being operated for profit” or “fraudulently conducted.” The interrelationship between Ch. 176E Delta and Ch. 175 Delta calls into question both. Ch. 176E Delta participated in a scheme that drove its providers into the arms of Ch. 175 Delta to buttress a for-profit PPO network. It allowed its Premier product to be dangled over the new combined PPO and Premier network to swell its ranks. It acquiesced to the absorption of its business – its accounts, providers, and goodwill – by its for-profit subsidiary. It masks these actions from the public by a tradename that presents both Delta entities as a singular entity. The Division should

exercise its authority to review conduct ripe for challenge as “for profit” and “fraudulent” – especially when Delta has defended this conduct in terms of escaping Division supervision.³

ii. *This Board’s Section 12 Authority*

“Plain language, of course, is the beginning of wisdom about legislative purpose.” Board of Review in Div. of Ins., 22 Mass. App. Ct. at 166. Section 12 states that “[a]ny dispute or controversy between a dental service corporation and any participating dentist ... may ... be submitted by any person aggrieved to [the] board ... for its decision with respect thereto.” (emphasis added). Reviewing identical language contained in Section 12 of Chapter 176B, the Appeals Court concluded: “On the basis of the plain language of the statute, the board’s powers of review are very broad.” Id. The Board’s powers of review are likewise “very broad” under 176E. See Cohen, Silvestri & Hammer, P.C. v. Dental Service of Massachusetts, Inc., 84 Mass. App. Ct. 1130, *1 (2014) (“General Laws c. 176E establishes an administrative process for resolving disputes between dentists and dental service corporations that is substantially similar to that of G.L. c. 176B, § 12, addressed in Nelson.”).

The transition of Ch. 176E Delta’s business to Ch. 175 Delta has materialized a concrete dispute and controversy between Ch. 176E Delta and its participating providers. Essential to this transition was the coercion exerted on Ch. 176E Delta’s providers to join Ch. 175 Delta’s combined PPO and Premier network. This coercion took the form of ultimatums, threats of practice disruption and network lock-out, and the deliberate deprivation of time and information to make informed decisions about the momentous changes being proposed. Delta presented a

³ It goes without saying that the manner of Delta’s exit from Chapter 176E will establish precedent in the Commonwealth for related regimes and structures. In June, Minuteman Health Inc. announced a similar plan to abandon its nonprofit structure so that it can sell health plans under a new for-profit entity. It cited the regulatory relief afforded by for-profits as one reason for the transition. (Exhibit H).

fundamental change in the regulatory environment in which providers would engage with Delta and patients in the guise of a modest request to sign on the line of a new contract.

Delta presents this dispute as one involving a Chapter 175 entity and its efforts to establish a *bona fide* business. But this business emerged from Chapter 176E. Ch. 176E Delta participated in a scheme to pressure *its* network providers to sign up with *its* subsidiary or lose access to *its* product when it transitioned fully to the subsidiary. Ch. 176E Delta cannot now distance itself from this scheme. Its marketplace actions demand review.

The instant dispute and controversy, therefore, is primarily one between Ch. 176E Delta and its providers. The issues for hearing are whether Ch. 176E Delta's providers were unlawfully coerced to join Ch. 175 Delta's network and the extent of Ch. 176E Delta's participation in this coercion. Section 12 unquestionably grants the Board the authority to review the question of coercion between Ch. 176E Delta and participating providers. The plain language of Section 12 places no limits on the "disputes" or "controversies" subject to Board review. Moreover, given the Commissioner's authority to review the contractual relationship between Ch. 176E Delta and its providers (§ 4) as well as possible violations of "any provision of law" (§ 13(7)), the authority to adjudicate and remedy instances of coercion between contracting parties under Chapter 176E inheres in Section 12's grant of jurisdiction to the Board.

B. The Remedies Available to the Board

M.G.L. c. 176E grants the Board broad power "to decide" the dispute or controversy submitted to it. No textual limit is placed on the remedial form this decision may take. "A complete administrative remedy is provided by G.L. c. 176B, § 12." Nelson, 377 Mass. at 753. It follows that a complete administrative remedy is available under M.G.L. c. 176E, § 12. See Cohen, Silvestri & Hammer, P.C., 84 Mass. App. Ct. at *1.

First and foremost, Section 12 authorizes an adjudicatory hearing to determine: (1) whether Ch. 176E Delta is operating a dental service corporation in good faith; (2) whether Ch. 176E Delta has violated the statutory prohibition against operating for profit or fraudulently; (3) the extent of Ch. 176E Delta's involvement in Ch. 175 Delta's PPO programs; and (4) the extent of Ch. 176E Delta's involvement in the coercion of its providers to sign contracts with Ch. 175 Delta and whether the rollout plan for the combined network called for tactics that could be deemed coercive.

Furthermore, Section 12 authorizes the Board to remedy any determinations made adverse to Ch. 176E Delta. "Rights and remedies are interdependent components of dispute resolution." Board of Review in Div. of Ins., 22 Mass. App. Ct. at 166. The remedial options include: (1) rescinding the Ch. 175 Delta contracts or granting Ch. 175 Delta providers the right to terminate their contracts without a resulting 1-year ban from the network; (2) prohibiting Ch. 176E Delta from allowing Ch. 175 Delta to bundle the Premier product with Ch. 175 Delta's PPO offerings to force participation in the combined network – in other words, if Ch. 175 Delta seeks to operate on a level playing field, it must grow its PPO network with providers who choose to participate in PPO-only programs and not by leveraging a nonprofit dental service plan; and (3) disregarding the formal separateness of Ch. 176E Delta and Ch. 175 Delta.

Indeed, if Delta does not respect the distinction between Ch. 176E Delta and Ch. 175 Delta, neither should the Division. The Division's inherent authority to protect the integrity of Chapter 176E would include the power to inspect the nature of the relationship between Ch. 176E Delta (DSM) and Ch. 175 Delta (DMIC) and regulate them as a unitary entity if it finds the corporate distinction to be a sham, at least with respect to Ch. 175 Delta's PPO and Premier product offerings. If Ch. 176E Delta and Ch. 175 Delta have coordinated the transfer of Ch.

176E Delta's business – including its accounts, subscriber lists, and providers -- to a for-profit entity, supported by Ch. 176E Delta's provider network, the Division should disregard corporate shells and regulate Ch. 175 Delta as a dental service corporation, at least with respect to products offered in its combined PPO and Premier network.⁴ This regulatory authority would derive from the Commissioner's power to enjoin Ch. 176E Delta from operating for profit (§ 13(2)) and, conversely, from the prohibition against a non-dental service corporation operating a dental service plan (§ 15).

Ch. 176E Delta and Ch. 175 Delta themselves publically dispense with the formalities of a distinction between them and their product offerings. They both operate under the "Delta Dental" trade name. The Delta Dental Massachusetts website promotes a suite of "Delta Dental" products without identifying the corporate entity that offers them. Ch. 175 Delta's combined PPO and Premier network uses the Premier trademark, the repository of decades of goodwill associated with the nonprofit dental service plan. In promoting the new Total Choice PPO plan, the website claims that the plan "gives you the best of Delta Dental – service, choice and value," thereby appropriating the goodwill accumulated by Ch. 176E Delta and generated by Ch. 176E Delta's providers. Recent correspondence from counsel for DSM and DMIC echoes the integration of Delta's products, stating that "[t]his lower cost PPO product complements the other products offered by DMIC and DSM, to create a broad suite of options for Massachusetts customers." These are entities joined at the hip in the combined PPO and Premier network and should be regulated as such.

⁴ Ch. 176E Delta also disregards corporate formalities when it reaches into another wholly-owned subsidiary to pay its president.

C. The Associational Standing of MDS

The adjudicatory proceeding provided by M.G.L. c. 176E, § 12 may be initiated by “*any* person aggrieved.” Delta’s flight from Chapter 176E impacts the Commonwealth’s largest provider network. By Delta’s own count, 80% of Ch. 176E Delta’s Premier providers have contracted with Ch. 175 Delta. Many have done so involuntarily. MDS, as the representative of over 80% of the Commonwealth’s providers, asserts the standing of its aggrieved members.

An association has standing to assert claims on its members’ behalf when: (1) its members would otherwise have standing to sue in their own right; (2) the interests the association seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. See Modified Motorcycle Association of MA, Inc. v. Com., 60 Mass. App. Ct. 83, 85, fn. 6 (2003) (citing Hunt v. Washington State Apple Advertising Comm., 432 U.S. 333 (1977)).

First, any of MDS’s Ch. 176E Delta providers would have standing as an “aggrieved person” under Section 12. Second, MDS seeks to protect interests germane to its organizational purpose. Its corporate purposes include: “to promote and advance the art and science of dentistry and the interests of member dentists relative to the practice of dentistry”; “to evaluate, encourage and assist in the administration of dental care programs”; and “to represent its members in relationship with third parties and with agencies of federal, state and local government in matters relating to the practice of dentistry.” (Exhibit G). MDS’s petition seeks to advance each of these purposes. Finally, the adjudicatory proceeding before the Board would not require the participation of individual members. The proceeding calls for a review of Delta’s actions. If necessary or appropriate, however, MDS will provide the testimony of individual members concerning the coercive effect of Delta’s actions.

D. The Timeliness of MDS's Request

M.G.L. c. 176E, § 12 provides that a dispute or controversy may be submitted to the Board for review “within thirty days after such dispute or controversy arises.” MDS filed its petition on January 20, 2017, a full month ahead of the Ch. 175 Delta contract deadline of February 28, 2017. The petition requested a hearing “to achieve what Delta’s ultimatums have deliberately prevented: a careful and comprehensive review and understanding of the consequences of the transition of Ch. 176E Delta’s business and market share to Ch. 175 Delta.”

The dispute and controversy between Ch. 176E Delta and its providers did not terminate with the last signed contract. It persists today on multiple levels. The integrity of the Chapter 176E regime is of continuing and precedential concern. The question of coercion will only intensify in relevance and urgency as Ch. 175 Delta begins to offer the Total Choice PPO plans and its provider network is pressed into service. Just as the Delta dispute and controversy persists, so does this Board’s review authority under Chapter 176E.

V. **CONCLUSION**

Ch. 176E Delta purports to transfer a business nourished for decades on the privileges afforded by Chapter 176E to an entirely different regulatory and contractual regime for the benefit of its for-profit subsidiary. A shift this momentous deserves full review by the Board.

MASSACHUSETTS DENTAL SOCIETY,

By its attorneys,



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Boston, MA 02110-3333
(617) 482-1776

Dated: September 15, 2017

EXHIBIT A

LEAVE THIS SPACE BLANK FOR DATING

The location of the principal office of the corporation in Massachusetts is to be the Town or
City of Boston Street

The purposes for which the corporation is formed are as follows:

To establish, maintain and operate a non-profit
dental service plan under the provisions of
General Laws, Chapter 176E.

(If seven days' notice is waived, fill in the following waiver.)

We hereby waive all the requirements of the General Laws of Massachusetts for notice of the
first meeting for organization, and appoint 21st day of June, 1966.
at 6 o'clock P. M., at The Harvard Club of Boston

as the time and place for holding such first meeting.

IN WITNESS WHEREOF we hereto sign our names, this 21st day of June, 1966.

(Type or plainly print the name and address of each incorporator in space below.)

NAME	RESIDENCE Give Number and Street, City or Town
<i>Wendell G. Ahearn</i> Wendell G. Ahearn	52 Brunswick Street, Pittsfield
<i>Sumner H. Babcock</i> Sumner H. Babcock	113 Abbott Road, Wellesley
<i>Harry K. Bailey</i> Harry K. Bailey	84 Pleasant Street, Marblehead
<i>Arthur G. Carty</i> Arthur G. Carty	303 Cross Street, Belmont
<i>Leonard W. Donsanto</i> Leonard W. Donsanto	6 Gordon Road, Milton
<i>James W. Etherton</i> James W. Etherton	36 Loring Avenue, Winthrop
<i>Frank J. Fitz-Gibbon</i> Frank J. Fitz-Gibbon	161 Dartmouth Street, Holyoke

August 18, 1966.

I have examined the original and this is an
exact copy.

Salomon J.andler, att. attorney

ARTICLES OF ORGANIZATION

We, Harry K. Bailey, President, Shepard A. Hildebrand, Treasurer,
John Cancian, Clerk-or-Secretary, and Harry K. Bailey,
Leonard N. Donsanto, Francis J. Fitz-Gibbon, Craig B. Haines,
Donald S. Hutchinson, S. Ralph Jacobs, David P. McSweeney, and
Gregory Smith

being a majority of the directors (or officers having the power of directors)

of Massachusetts Dental Service Corporation

elected at its first meeting, in compliance with the requirements of General Laws, Chapter 180:176E,
Section 2. hereby certify that the following is a true copy of the agreement of association to form
said corporation, with the names of the subscribers thereto:

We, whose names are hereto subscribed, do, by this agreement, associate ourselves with the
intention of forming a corporation under the provisions of General Laws, Chapter 180:176E.

The name by which the corporation shall be known is Massachusetts Dental
Service Corporation.

The location of the principal office of the corporation in Massachusetts is to be the Town or

City of Boston Street

The purposes for which the corporation is formed are as follows:

To establish, maintain and operate a non-profit
dental service plan under the provisions of
General Laws, Chapter 176E.

(If seven days' notice is waived, fill in the following waiver.)

We hereby waive all the requirements of the General Laws of Massachusetts for notice of the
first meeting for organization, and appoint 21st day of June, 1966.

at 6 o'clock P. M., at The Harvard Club of Boston

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<u>Sumner H. Babcock</u> Sumner H. Babcock	113 Abbott Road, Wellesley
<u>Shepard A. Hildebrand</u> Shepard A. Hildebrand	84 Pleasant Street, Northbrook

LEAVE THIS SPACE BLANK FOR BINDING

the

21st

day of

June

in the year 19 66.

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President	Harry K. Bailey, Marblehead,	84 Pleasant Street
Treasurer	Shepard A. Hildebrand, Marblehead,	44 Clifton Avenue
Clerk Secretary	John Cancian, Belmont,	16 Garfield Road
Directors (or officers having the power of directors)		
	Harry K. Bailey, Marblehead,	84 Pleasant Street
	Leonard N. Donsanto, Milton,	6 Gordon Road
	Francis J. Fitz-Gibbon, Holyoke,	161 Dartmouth Street
	Walter C. Guralnick, Chestnut Hill,	118 Wallis Road
	Craig B. Haines, Milton,	6 Lantern Lane
	Donald S. Hutchinson, South Hadley	9 Greenwood Lane
	S. Ralph Jacobs, Lincoln,	Round Hill Road, Westo
	David P. McSweeney, Dorchester,	2 Atherston Street
	Gregory Smith, Marblehead,	18 Orne Street

We, being a majority of the directors of Massachusetts Dental Service
Corporation (Name of Corporation)

do hereby certify that the provisions of sections eight and nine of Chapter 156 relative to the calling and holding of the first meeting of the corporation, and the election of a temporary clerk, the adoption of by-laws and the election of officers have been complied with.

IN WITNESS WHEREOF AND UNDER THE PENALTIES OF PERJURY, we hereto sign our names,
this 21st day of June, 1966.

(President, Treasurer, Clerk or Secretary, and majority of Directors or of Board, sign in space below.)

Harry K. Bailey
Harry K. Bailey, President-Director

Donald S. Hutchinson
Donald S. Hutchinson

Shepard A. Hildebrand
Shepard A. Hildebrand, Treasurer

S. Ralph Jacobs
S. Ralph Jacobs

John Cancian
John Cancian, Clerk

David P. McSweeney
David P. McSweeney

Craig B. Haines
Craig B. Haines

Gregory Smith
Gregory Smith

ARTICLES OF ORGANIZATION
GENERAL LAWS, CHAPTER XXX 176E

I hereby certify that, upon an examination of the within-written articles of organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles and cause them to be recorded and filed when validated.

Secretary of the Commonwealth

I hereby certify that it appears upon an examination of the within articles of organization and the records of the corporation duly submitted to my inspection, that the requirements of Chapter One Hundred and Seventy-Six E of the General Laws have been complied with, and I hereby approve said articles this Seventeenth Day of August, A. D. Nineteen Hundred and Sixty-Six.



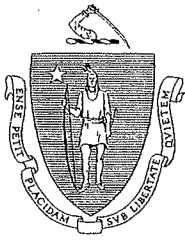
CHARTER TO BE SENT TO

Commissioner of Insurance

CHARTER MAILED
DELIVERED

NOTIFICATION SENT TO

EXHIBIT B




The Commonwealth of Massachusetts
Department of Banking and Insurance
Division of Insurance

GOVERNMENT CENTER - STATE OFFICE BUILDING
100 CAMBRIDGE STREET, BOSTON, MASS. 02202

C. EUGENE FARNAM
COMMISSIONER OF INSURANCE

TELEPHONE
727-3357
AREA CODE 617

I hereby certify and find, from the examination made by me and from the facts brought forth by such examination, and from the evidence submitted at a meeting held on the seventeenth day of August, nineteen hundred and sixty-six, by the following incorporators, officers and directors, Wendell G. Ahearn, Sumner H. Babcock, Harry K. Bailey, Arthur G. Canty, Leonard N. Donsanto, James W. Etherington, Frank J. Fitz-Gibbon, Walter C. Guralnick, Craig B. Haines, Donald S. Hutchinson, S. Ralph Jacobs, David P. McSweeney, and Gregory Smith of the proposed Massachusetts Dental Service Corporation, that it appears that said incorporators, officers and directors are of good repute, and intend in good faith to operate the proposed corporation, and that an adequate initial reserve fund will be established to protect the subscribers, and that the requirements of Chapter 176E of the General Laws have been complied with, and I hereby approve said Articles of Organization this seventeenth day of August, A. D. nineteen hundred and sixty-six.



Commissioner of Insurance

EXHIBIT C

December 19, 2016

RAYMOND MARTIN DDS MAGD PC
200 CHAUNCY ST No 212
MANSFIELD, MA 02048

Dear Practice Administrator,

We are writing to let you know about some very important information that will change the way Delta Dental of Massachusetts works with you and your practice.

For nearly 50 years, we have connected employers and their employees with dentists to give Massachusetts families access to affordable quality oral care. As the needs of employers and the dental community have evolved, we too have continued to evolve. This evolution continues as we are now making changes to streamline both our corporate and provider network structure.

Delta Dental of Massachusetts products are currently being administered by two separate insurance companies, both of which are doing business as Delta Dental of Massachusetts:

- Dental Service of Massachusetts, Inc. (DSM) – Current Delta Dental PPOSM and Delta Dental Premier[®] Networks
- DSM Massachusetts Insurance Company, Inc. (DMIC) – New PPO and Premier, EPO, and the current Medicare Options, Patient Direct and DeltaCare networks

Beginning in 2017, administration of all Delta Dental of Massachusetts business will be consolidated into DMIC. As part of this transition, the Delta Dental PPOSM and Delta Dental Premier[®] networks are being consolidated into a new single network within DMIC, called PPO and Premier. This transition will be seamless for providers that are participating with both DSM and DMIC. Providers only participating with DSM will not be participating for Delta Dental of Massachusetts business administered by DMIC and may experience disruption.

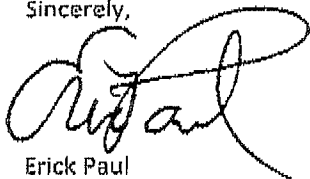
What do you need to do?

The transition of members to DMIC will begin in 2017 and it is critical that you take action immediately to avoid any interruption in your status as a participating provider for your patients who are Delta Dental of Massachusetts members.

Please sign and return the enclosed DMIC Participation Agreement by January 6, 2017 to ensure you are included in the directories for business administered by DMIC.

If you have any questions, please contact our dedicated support team at 617-886-1991 or via email at Networks@DeltaDentalMA.com. Thank you for all you do to support the health of our members.

Sincerely,



Erick Paul
Vice President, Network Development

Corporate Office:
DELTA DENTAL OF MASSACHUSETTS
465 Medford Street
Boston, MA 02129-1454

Mailing Address:
DELTA DENTAL OF MASSACHUSETTS
P.O. Box 9695
Boston, MA 02114-9695

Telephone: 617-886-1991
Fax: 617-886-1233
www.deltadentalma.com

EXHIBIT D

Frequently Asked Questions

Why am I receiving this agreement if I am already participating with Delta Dental of Massachusetts?

Delta Dental of Massachusetts products are currently being administered by two separate insurance companies, both of which are doing business as Delta Dental of Massachusetts:

- Dental Service of Massachusetts, Inc. (DSM) – Current Delta Dental PPOSM and Delta Dental Premier[®] networks
- DSM Massachusetts Insurance Company, Inc. (DMIC) – New combined PPO and Premier Network, and the current EPO, Patient Direct Discount Plan, Medicare Options, and DeltaCare networks

We are beginning the process of transitioning all business to DMIC. Because DSM and DMIC are different companies, a provider agreement with each is required for you to remain in network.

Why do I need to participate in both the PPO and Premier in this new agreement?

Within DMIC, we are combining PPO and Premier, so that both are part of the same network. For this reason, you must join the combined network to be a participating dentist for our DMIC Premier, PPO, and PPO and Premier members.

However, within the combined network, there will be different fee schedules for PPO products and Premier products. This means that you will still receive Premier fees when you see Premier-only members. For members with PPO products, or PPO and Premier products, you will receive the PPO fee schedule.

How will this agreement affect reimbursement and participation status for my current Delta Dental of Massachusetts patients?

Today, the Delta Dental PPOSM and Delta Dental Premier[®] products are being administered by DSM and covered by your existing participation agreement.

These products will be transitioned to DMIC over the next several years. Unless you also participate with DMIC, you will become non-participating for the members who have these products as they transition to DMIC. And this means that once all of our members are fully transitioned, you will be non-participating with all Delta Dental of Massachusetts business.

The good news is the transition is easy. The PPO and Premier fee schedules are the same for both DSM and DMIC for 2017.

What do I need to do to complete this agreement?

As an already credentialed provider, participating with DMIC is easy!

- Review the materials provided in this packet, including the agreement
- Fill out the Participation Agreement Form and the Provider Listing. Sign the Participation Agreement Form.
- Place the agreement in the supplied business return envelope and mail to the address on the form
- A copy will be returned to you for your records

What happens if I don't complete this agreement?

You will be a non-participating provider (out-of-network) provider for DMIC plans.

This means that as groups transition from DSM to DMIC, you will be non-participating for a growing share of Delta Dental members. And after the transition to DMIC is complete, you will be non-participating (out-of-network) for all Delta Dental members. This will mean that:

- You will not appear on provider listings for business administered by DMIC
- We will need to tell your impacted patients that you are no longer a network provider for their DMIC plan.
- Delta Dental would also need to inform impacted members about available network providers in their area and the benefit of receiving care from participating providers.
- If you do see members as a non-participating provider, payments for care provided by you will be made to the members and you will need to seek full payment from those members.
- After transition to non-participating provider status, there may be a one-year lockout period to become a participating provider with DMIC.

What happened to the Preferred Options PPO?

Over the last year, we have been building the Preferred Options PPO. With the decision to consolidate administration of all Delta Dental of Massachusetts business to DMIC, we have opted to merge the Preferred Options PPO into the combined PPO and Premier network.

What if I still have questions?

Delta Dental of Massachusetts has created a dedicated team to help answer any questions you may have as you select the participation level that best meets your individual needs. The team is in the process of reaching out to your office in the next two weeks and can also be reached at:

Email: Networks@DeltaDentalMA.com

Phone: 617-886-1991

FAX: 617-886-1233

EXHIBIT E

January 10, 2017

Dear Delta Dental Dentist,

We are writing to follow up on our December correspondence about changes that Delta Dental of Massachusetts is beginning to implement in 2017. We hope to clarify any confusion arising after our December letter. We want to assure dentists that no changes have yet gone into effect that impact your existing contracts. Instead, we enclosed a new contract for products that will be offered under a new Delta Dental network.

As was noted in our December letter, two companies do business in Massachusetts under the Delta Dental umbrella:

- Dental Service of Massachusetts, Inc. (DSM), which offers products that either use the Delta Dental Premier or the Delta Dental PPO network.
- DSM Massachusetts Insurance Company, Inc. (DMIC), which currently offers products that use Delta Dental's Medicare Options, Patient Direct and DeltaCare networks, and which intends to offer products in 2017 using what we are currently calling the "DMIC PPO and Premier" network.

Both companies currently offer products, but we are looking to change our focus during 2017 and concentrate on the marketing and administration of products offered by DMIC. As we do this, we are looking to build a strong "DMIC PPO and Premier" network to meet the evolving needs of our members and clients for access to affordable quality oral care.

At this time, more than 2,500 of your fellow Massachusetts dentists have already joined the new "DMIC PPO and Premier" network. We fully expect this number to grow in the next few weeks, and we hope that you choose to become a part of this new network. To help you consider our DMIC contract, we thought it would be helpful to share answers to some common questions we have received from other network providers:

Will this change my current agreements with Delta Dental of Massachusetts?

The current Delta Dental of Massachusetts PPO and Premier networks are administered by Dental Service of Massachusetts, Inc. ("DSM"). If you presently participate in the Premier and/or PPO networks, your existing provider agreements are with DSM, and these agreements will not be affected by any provider agreements for the DMIC network. All existing DSM Delta Dental Premier and Delta Dental PPO provider agreements (and fee schedules) will continue to apply whenever you see members with PPO, Premier, or PPO Plus Premier plans issued by DSM.

During 2017, however, Delta Dental of Massachusetts will begin shifting its marketing focus away from the Delta Dental Premier and Delta Dental PPO business offered under DSM to products offered under DMIC. As a result, we expect many employer groups and members to choose DMIC products when renewing their dental plans.

For coverage that is written under DMIC, providers must have signed contracts with DMIC to be covered as in-network providers. For those dentists who have not yet signed a contract with DMIC, we forwarded copies of our

Corporate Office:
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465 Medford Street
Boston, MA 02129-1454

Mailing Address:
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P.O. Box 9695
Boston, MA 02114-9695

Telephone: 617-886-1991
Fax: 617-886-1233
www.deltadentalma.com

DMIC contract with our December letters. The Provider Agreement with DMIC (and its associated fee schedules) apply whenever you see members enrolled in DMIC plans.

Please note if you are already a DMIC provider, the new DMIC Provider Agreement (and associated fee schedules) will replace any existing provider agreements with DMIC for the current EPO, Patient Direct Discount Plan, and Medicare Options products.

When are dentists asked to respond to the offered DMIC contract?

We understand that the end of the year can be a busy period, and that many dentists felt that we did not provide enough time to consider the DMIC contract offer that we sent with our December letter. We previously indicated that we would extend the signing date to January 31. The Massachusetts Division of Insurance has requested that we offer *one* further extension, to February 28, 2017, and we have agreed to that request. Please be sure to have your signed DMIC contracts back to us by that date to insure your inclusion in our new DMIC provider directories. Please note, we will allow all non-DMIC dentists to join the DMIC preferred network if they submit the executed DMIC contract by February 28, 2017. After that date, we may only accept new dentists where needed to fortify the network.

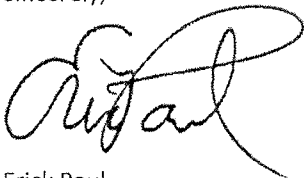
Have questions?

Our transition will not happen overnight, and certain accounts may elect not to move to DMIC. We want you to know that when you are treating members covered through DSM products, the benefits, fees and other administrative procedures will be those under the DSM contracts, just as they are now. It is important for you to know, however, that when you are treating members covered under DMIC products, the benefits, fees and other administrative procedures will be those that are part of the DMIC contracts. If you want to be part of the network that applies to DMIC patients, you will want to have a signed contract with DMIC. If you are not part of the DMIC network, your current patients could be subject to higher out-of-pocket costs if their employer shifts from DSM coverage to DMIC coverage.

Our change in marketing strategy from DSM to DMIC products may eventually impact your billings as a dentist. We understand that you may have individual queries about potential impacts to your business, and we therefore strongly encourage you to contact us to speak with one of our dedicated network support team at 617-886-1991, or via email at Networks@DeltaDentalMA.com, to talk about the DMIC or DSM contracts, the products that may be offered through Delta Dental, and the way your Delta Dental billing may change in the future.

Thank you again for your work caring for our members and your patients. **As noted above, please submit your DMIC contract by February 28, 2017 in order to be guaranteed admission to the DMIC's new network.** We hope that we will be able to count you among the providers that are part of our DMIC network.

Sincerely,



Erick Paul
Vice President, Network Development

Corporate Office:
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465 Medford Street
Boston, MA 02129-1454

Mailing Address:
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P.O. Box 9695
Boston, MA 02114-9695

Telephone: 617-886-1000
Fax: 617-886-1199
www.deltadentalma.com

EXHIBIT F

May 1, 2017

Dear Doctor:

Over the past several months, my team and I have had the opportunity to speak with many of you about the new DSM Massachusetts Insurance Company, Inc. (DMIC) PPO And Premier network. Your participation in the new network is very much appreciated, and we are looking forward to fostering a deeper relationship as we move ahead. I would like to give you an update on network development, as well as share two changes that are being made to your provider contracts in response to feedback that we have received.

Network Update

The DMIC PPO And Premier network contracting is now complete, and we are pleased to announce that more than 80% of the dentists enrolled in the Delta Dental of Massachusetts Premier network have joined the new network.

Specialist Referrals

As many of you know, when you refer your patient to an out-of-network specialist for care, their out-of-pocket costs can be higher than anticipated. In addition, because many patients rely on the advice of their dentist when making decisions regarding a specialist, they may not realize they are going outside the network until after they receive care. In fact, this is an area of frequent concern and complaints by our members. The referral language in Section 3(b) of your DMIC Provider Agreement was intended to protect members from confusion and unexpected out-of-network costs. It was not intended to interfere with a provider's clinical judgment regarding appropriate care for patients.

In response to provider feedback on this language, and in keeping with our original intention, the specialist referral language is being removed from the DMIC Provider Agreement. More specific guidance on specialist referrals has been added to the Delta Dental of Massachusetts Provider Manual. The new language in the Provider Manual will encourage a dentist, whenever possible, to refer members to specialists who participate in the DMIC PPO And Premier network. If you do not know whether a particular specialist is in-network under the member's plan, you should encourage your patient to call Customer Service to verify the provider's network participation. As always, the decision where to obtain services rests with the member. To review our updated Provider Manual, you can visit our provider website at: www.deltadentalma.com.

Orthodontia Fees

The DMIC PPO orthodontics fees were an area of concern for many orthodontists, and we said this was our top priority to address in the DMIC PPO fee schedule. Since reimbursement for many orthodontic fees are set at the time of banding, we felt it was important to make certain adjustments to the DMIC PPO fee schedule as soon as possible.

Enclosed you will find an Amendment to your DMIC Provider Agreement that sets forth (1) the deletion of the specialist referral language and (2) changes to certain Orthodontia codes on the DMIC PPO Fee Schedule. This contract Amendment will officially take effect on June 15, 2017. We sincerely appreciate the feedback that you have shared with us. We acknowledge and value the quality care you provide to Delta Dental members and our continued working relationship. If you have any questions, please call the Professional Relations department at 617-886-1009.

Sincerely,



Marianne Leahy
Vice President, Provider Network Management

EXHIBIT G

The Commonwealth of Massachusetts

PAUL GUZZI

Secretary of the Commonwealth

STATE HOUSE, BOSTON, MASS. 02133

RESTATED ARTICLES OF ORGANIZATION

General Laws, Chapter 180, Section 7

This certificate must be submitted to the Secretary of the Commonwealth within sixty days after the date of the vote of members or stockholders adopting the restated articles of organization. The fee for filing this certificate is \$38.00. Make check payable to the Commonwealth of Massachusetts.

We, Joseph G. DiStasio
William H. McKenna

President/Vice President, and
Secretary
of

MASSACHUSETTS DENTAL SOCIETY

(Name of Corporation)

located at Suite 4318, Prudential Tower Building, Boston, MA 02199

do hereby certify that the following restatement of the articles of organization of the corporation was duly adopted at a meeting held on May 10, 1975, by vote of 151 delegates, being at least two thirds of its members legally qualified to vote in meetings of the corporation (or, in the case of a corporation having capital stock, by the holders of at least two thirds of the capital stock having the right to vote thereon):

1. The name by which the corporation shall be known is:-
MASSACHUSETTS DENTAL SOCIETY

2. The purposes for which the corporation is formed are as follows:- To promote and advance the art and science of dentistry and the interests of member dentists relative to the practice of dentistry; to encourage the improvement of the dental health of the public; to encourage and promote sound programs of dental education; to encourage dental research; to evaluate, encourage and assist in the administration of dental care programs; to encourage the highest possible standard of professional ethics relating to the practice of dentistry; to represent its members in relationships with third parties and with agencies of federal, state and local government in matters relating to the practice of dentistry; and to engage in any activities necessary, convenient or incidental to the foregoing permitted by the laws of the Commonwealth of Massachusetts to a corporation organized pursuant to Chapter 180 of the General Laws.

NOTE: If provisions for which the space provided under Articles 2, 3 and 4 is not sufficient additions should be set out on continuation sheets to be numbered 2A, 2B, etc. Indicate under each Article where the provision is set out. Continuation sheets shall be on 8 1/2" x 11" paper and must have a left-hand margin 1 inch wide for binding. Only one side should be used.

3. If the corporation has more than one class of members, the designation of such classes, the manner of election or appointment, the duration of membership and the qualification and rights, including voting rights, of the members of each class, are as follows:—

NONE

- 4. Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or members, or of any class of members, are as follows:—

In furtherance of the corporation's purposes, but not for any other objects or purposes, the corporation shall have, and may exercise, any and all of the powers authorized by law for a corporation organized under G.L. Chapter 180, including, but not limited to the powers described in, and referred to by, Section 6 of said Chapter 180, as said Section and Chapter may be from time to time amended or added to, provided that no such power shall be exercised in a manner inconsistent with said Chapter 180 or any other chapter of the Massachusetts General Laws.

"We further certify that the foregoing restated articles of organization effect no amendments to the articles of organization of the corporation as heretofore amended, except amendments to the following articles

2 & 4

(If there are no such amendments, state "None".)

Article 2 effecting a restatement of the purposes of the corporation. Article 4 effecting a restatement of the powers of the corporation.

IN WITNESS WHEREOF AND UNDER THE PENALTIES OF PERJURY, we have hereto signed our names this

10th

day of

May

in the year 19 75

Joseph L. DeStasio

President ~~XXXXXXXXXX~~

William H. McFadden

Secretary

~~XXXXXXXXXX~~

18430

RECEIVED

THE COMMONWEALTH OF MASSACHUSETTS

MAY 13 1975

RESTATED ARTICLES OF ORGANIZATION

CORPORATION DIVISION
SECRETARY'S OFFICE

(General Laws, Chapter 180, Section 7)

I hereby approve the within restated articles of organization and, the filing fee in the amount of ~~\$15.00~~ ^{\$20.00} having been paid, said articles are deemed to have been filed with me this ^{14th} day of ^{May} 19 ⁷⁵.
Paul Guzzi

PAUL GUZZI

~~JOHN J. MADDEN~~
Secretary of the Commonwealth
State House, Boston, Mass.

TO BE FILLED IN BY CORPORATION
PHOTO COPY OF RESTATED ARTICLES OF ORGANIZATION TO BE SENT

TO:
John J. Madden, Esq.
Hemenway & Barnes
73 Tremont Street
Boston, Mass. 02108
Tel. No. 227-7940

EXHIBIT H



Comments

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Starting at 99 cents**Members**
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Minuteman Health shifting to for-profit status

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GOOGLE

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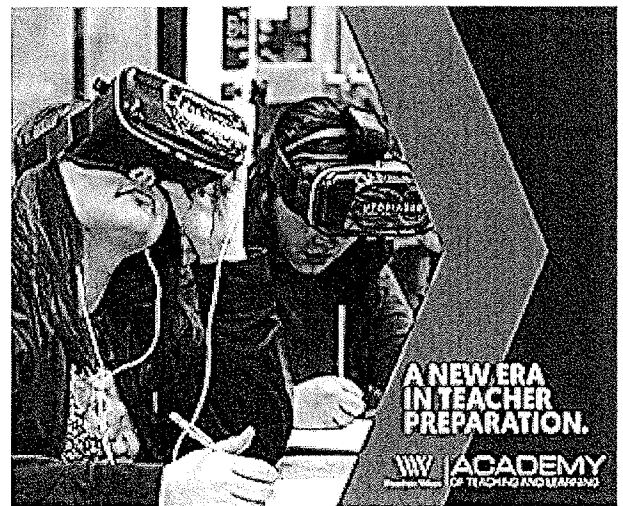
6

By Priyanka Dayal McCluskey | GLOBE STAFF JUNE 23, 2017

Minuteman Health Inc., an insurer launched with millions of taxpayer dollars, said Friday it is seeking to ditch its nonprofit structure next year and sell plans under a new for-profit entity.

Executives of the Boston-based company said the change is necessary because the company faces regulations that are too burdensome. The company struggled to grow its membership and lost money after its launch in 2013.

Minuteman was created under a program of the Affordable Care Act that was designed to offer lower-cost insurance options for individuals and small businesses. About two dozen such insurers were launched with \$2.4 billion in federal funds — including \$156 million for Minuteman. Many of the insurers struggled and shut down. One insurer in Maryland recently converted to a for-profit.

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Tom Policelli, Minuteman's chief executive, said the company wants to do business as a for-profit because under current rules, it cannot grow its membership substantially beyond individuals and small businesses. Insurers such as Minuteman that sell plans in that market must comply with a controversial policy known as risk adjustment, which requires insurers with healthier members to make payments to insurers with sicker members. Minuteman has long complained that risk adjustment has hurt the company's finances and ability to grow.

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Executives said they will stop selling plans under their current corporate structure as of Jan. 1. Instead, they have formed a new company, Minuteman Insurance Co., to sell health plans in 2018.

Minuteman has about 37,000 members; they are not expected to see any interruption in coverage this year.

But the new for-profit company still needs approval to sell insurance in Massachusetts and New Hampshire. Executives have yet to raise enough capital to get approval from insurance regulators. They also must establish contracts with health care providers and design new health plans before a deadline of mid-August, regulators in both states said.

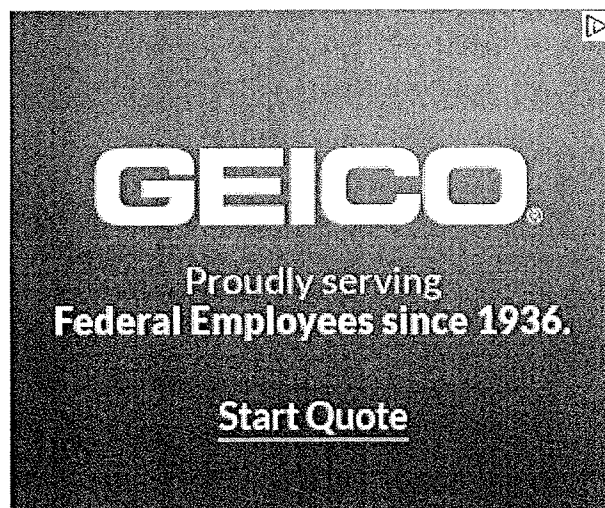
“We know that they’re looking at forming a new company, which would be a private venture, and are in the process of getting sufficient funds in order to complete their application for licensure,” said New

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Hampshire Insurance Commissioner Roger Sevigny. “We are certainly hopeful they’re able to do that.”

Comments

Chris Goetcheus, a spokesman for the Massachusetts Division of Insurance, said regulators in this state are also waiting to learn whether Minuteman has enough capital to launch a new company. “Right now, it’s wait and see,” he said.



After stumbling in Massachusetts, Minuteman expanded to New Hampshire and now has the bulk of its members there. New Hampshire Republicans seized on the company’s announcement Friday as an example of the failure of the Affordable Care Act, or Obamacare.

In Washington, Republicans in Congress have drafted legislation to undo much of that sweeping law, which they blame for imposing onerous mandates and driving up health care costs. The law expanded insurance coverage to millions of Americans.

“Today’s announcement by Minuteman Health is more clear evidence that Obamacare has failed and that our nation’s health care system demands reform,” New Hampshire Governor Chris Sununu said. “It further underscores why Washington must act now to reform our health care system and take actions to stabilize our individual health insurance market.”

Policelli said executives remain committed to selling affordable plans to individuals and businesses in New Hampshire and Massachusetts once they get approval to operate under the new company.

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“The old company Minuteman Health Inc. will be exiting the exchange. . . . Our intention is the new company will pick up right where that left off,” he said. “Our goal is that at the end of this process, nothing will change for people who want the Minuteman brand.”

Minuteman executives did not say how much money they must raise to win approval for their new company. “We’re all very optimistic and confident about the path we’re on,” Policelli said.

If Minuteman doesn’t gain approval to sell plans for Jan. 1, its members will have to select a plan from another insurance carrier to stay covered in 2018. Individuals buying insurance on the Massachusetts Health Connector have nine other insurers to choose from, while individuals in New Hampshire have a choice of three other insurers.

Priyanka Dayal McCluskey can be reached at priyanka.mccluskey@globe.com. Follow her on Twitter [@priyanka_dayal](https://twitter.com/priyanka_dayal).

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Group that raised banner at Fenway wants to confront culture of racism

Comments

“The underlying message is the idea of racism as an American institution,” a member of the group said. [MORE...](#)



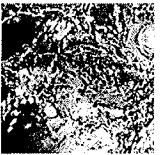
The sign on the Monster, and the monster behind the sign

Maybe it's a measure of just how stilted our national conversation is that so many people could not make sense of the banner unfurled from atop the Green Monster. [MORE...](#)



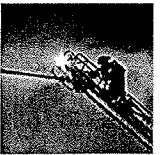
A police officer's simple salute recognizes an honorable life

The salute was profound for a woman who always longed not just for the father she lost but the respect he deserved. [MORE...](#)



Jose could bring 'the possibility of a winter-type storm' to New England

If the storm reaches Massachusetts' coast, it could bring winds and rough waters similar to a winter nor'easter. [MORE...](#)



Weymouth condo building under construction is the latest to be hit by blaze

Authorities are investigating whether the design of the building is similar to residential buildings that burned in Dorchester and Waltham. [MORE...](#)



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One family's story puts a spotlight on one of the state's most difficult and emotional entitlement programs, now at the core of the lawsuit. [MORE...](#)



After alleged taunting and hanging, N.H. town comes together

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Comments
Dozens gathered Tuesday to show support for the family of an 8-year-old biracial boy who, his family said, was taunted and hanged with a rope around his neck.

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Bridge connecting Charlestown and North End is about to get a makeover

The North Washington Street Bridge, the easternmost crossing over the Charles River, will be replaced in a project that could last as long as five years. [MORE...](#)

Man outside Wellesley school asked student to try self-harm challenge

A man in the bushes outside Sprague School asked a student to participate in the “Blue Whale” social media challenge. [MORE...](#)



‘The whole roof was on fire’: Neighbor shocked by Weymouth inferno

A fire destroyed a four-story, 50-unit condo building under construction by Pulte Homes. [MORE...](#)



Man asked for time alone with mom in N.H. hospital room and then opened fire, documents say

The R.I. man is accused of shooting his 70-year-old mother to death while she lay in the intensive care unit. [MORE...](#)



Boston police find 3 handguns in Unity Park Playground in Roxbury

Boston police recovered three handguns when they encountered 11 people some of whom were drinking alcohol in Unity Park Wednesday night. [MORE...](#)



Faust, who pushed for diversity at Harvard, to step down

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