

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF INSURANCE

MASSACHUSETTS DENTAL SOCIETY,

Petitioner

**PETITION OF THE MASSACHUSETTS DENTAL SOCIETY FOR THE ADOPTION
OF EMERGENCY REGULATIONS TO SUPPORT AND SUSTAIN DENTAL
PROVIDERS DURING THE COVID-19 OUTBREAK**

I. INTRODUCTION

The COVID-19 pandemic continues to devastate the people, businesses, and professions of the Commonwealth. Whether due to the contagion itself or the extraordinary measures taken by Governor Baker and other state instrumentalities to abate it, including emergency stay-at-home orders, the virus has posed an unprecedented threat to livelihoods.

Among the hard hit is the network of providers who deliver dental care to the people of Massachusetts. Practices have either closed or been severely curtailed, patients have been ordered to stay home, and the delivery of emergency dental care has required a strict and expensive regimen of precautions and PPE to protect the health of providers and patients alike. Uncertainty surrounds when, and how, these practices will reopen to their patients. The network is buckling under the strain of this outbreak and, if left unaddressed, will destroy practices across the Commonwealth and, with them, access to a vibrant, reliable, and effective system of dental care. Emergency action is required, now.

Uniquely spared from the devastation of COVID-19 is Delta Dental Services of Massachusetts, Inc., d/b/a as Delta Dental of Massachusetts (“DSM”), the Commonwealth’s only dental service corporation authorized to do business under M.G.L. c. 176E. Premiums are coming

in while claim reimbursements are not going out. Flush with cash and reserves, DSM is best situated to support the provider network on which it relies. DSM's Delta affiliates in other states have acknowledged this critical role and have implemented programs to sustain their networks, including reimbursement advance programs and assistance funds. Despite outreach from the Massachusetts Dental Society ("MDS"), however, DSM has refused to adopt similar measures for its Massachusetts providers. Prioritizing a short-term concern over maximizing its cash holdings over the long-term health and stability of its provider network, DSM is risking the very network on which it and its members depend. Emergency relief is required to overcome this shortsightedness and to realize longer term benefits to all stakeholders of sustaining this network through these extraordinarily challenging times.

Pursuant to 211 C.M.R. 16.00, MDS petitions the Division of Insurance to adopt such relief in the form of the proposed emergency regulations filed herewith.

II. THE EMERGENCY

The data collected at the state and national level tell a grim story. In Massachusetts¹, over 30% of providers have lost over \$30,000 in income between March 15 and April 15, with another 20% having lost between \$20,000 and \$30,000. 30% of providers estimate needing up to \$200,000 to financially survive the COVID-19 pandemic. Over 75% of providers anticipate a reduced schedule when their practices ultimately open. Over 40% of these respondents anticipated a June reopening. To the extent this crisis pushes into July or later, the data will invariably tell an even grimmer story.

¹ MDS collected this data in a Financial Impact Survey sent to all of its members. Nearly 1,000 members, representing nearly a 25% of membership, responded.

Nationally, 79% of dentists reported that their practices were closed except for emergency treatments.² Collections for the vast majority of dentists were *less than 5%* of what is typical in their practice. In the span of just two weeks, between March 23 and April 6, the percentage of dentists paying their staff fully plummeted from 27% to 11%, while the percentage not paying their staff at all rose from 28% to 44%. 46% of respondents stated that they would consider closing or selling their practices or filing for bankruptcy if the crisis continued through August.

III. DELTA'S RESPONSE

Neither the existential threat posed to dental practices, nor their own interest in abating that threat, has been lost on dental insurers, including Delta Dental affiliates. From Virginia to Washington state, Delta affiliates have implemented programs to mitigate the financial crisis facing their providers.³ Many of these programs provide for advances to practices in an amount that equals a percentage of their 2019 average weekly or monthly claims reimbursement up to a fixed maximum amount and with repayment spread out over a number of months. In some states, Delta has augmented these advances with relief funds to provide for grants to qualifying practices. Delta Dental of California announced on April 15th that it was establishing a \$200 million loan program to provide economic assistance to its provider network across 15 states and D.C., and committing another \$6 million in funding (\$11 million total) that will be made available in grants made by the Delta Community Care Foundation.

Delta's response in Massachusetts has been more tepid. It has committed to contributing \$200,000 to support non-profits in their COVID-19 responses. And on April 28, 2020, Delta announced that it would donate \$2 million to the MDS Foundation COVID-19 Recovery Fund,

² This data comes from the American Dental Association Health Policy Institute poll taken the during the week of April 6th.

³ For a summary of these programs as of May 4, 2020, see the attached Financial Assistance for Dental Practices from Third Party Payers prepared by the ADA.

which the MDS Foundation established on April 21 with a fundraising goal of \$2 million. While MDS applauds Delta's support of the foundation and local organizations battling the crisis, MDS has asked DSM to make the level of commitment to Massachusetts dentists that its affiliates in other states have made to their dentists. To date, DSM has rebuffed MDS in these discussions. The gap between the support made available by Delta to its provider network here and elsewhere is glaring. It calls for regulatory intervention.

IV. THE DIVISION'S ROLE

M.G.L. c. 176E provides for the Division's oversight and regulation of DSM as a dental service corporation, especially on matters affecting the compensation paid to participating dentists. See M.G.L. c. 176E, § 4. The Division recently exercised this authority in conditionally approving DSM's request for the adoption of a new reimbursement methodology used to determine the fees paid to dentists participating in DSM's "Premier" program. See June 19, 2019 Division Decision. In this decision, the Division acknowledged that Section 4 requires the Commissioner to ensure "that fees paid to participating dentists fall within a range of reasonableness and that the method of determining such fees is reasonable, considering the costs of running a dental practice."

This statutory oversight should be more vigilant, not less, when the fees paid to dentists have been entirely eliminated or sharply reduced as a result of an unprecedented crisis. The costs of running a dental practice – staff, mortgage and rent payments, insurance, PPE – have not vanished alongside revenues; many of these costs are fixed and others, like PPE, will only increase the costs of running a practice post-pandemic. Paying its providers nothing or next to nothing is inherently unreasonable considering the ongoing and impending costs of running a dental practice. M.G.L. c. 176E, § 4 requires immediate relief to bring the financial condition of providers within a range of reasonableness and away from the brink of collapse.

V. THE PROPOSED RELIEF

Pursuant to 211 C.M.R. 16.00, MDS, on behalf of its members, is filing the enclosed proposed emergency regulations that would provide immediate and longer term relief to the Commonwealth's dentists. The immediate relief, described in Section 156.03 of the proposed regulation, is modelled after the advance claims programs implemented by Delta in other states. To save practices from imminent ruin, Section 156.03 would provide for the payment of 50% of a provider's average weekly reimbursement payments received in 2019, multiplied by 8 weeks (an extremely conservative estimate of the duration of the crisis's impact), and capped at \$50,000 per practice. This modest infusion of cash will help providers stabilize their financial positions; will benefit DSM by sustaining its established network of providers; and will benefit patients by ensuring access to their preferred dentists. Section 156.03 protects DSM by providing for the repayment of the advanced amounts as soon as the financial standing of providers should allow for it and by allowing DSM, subject to the Commissioner's review and approval, to adopt reasonable conditions on its advance of funds. To be clear, this is not free money. It is prepayment of the fees that dentists will earn as soon as they are allowed to return to treating patients. Nor does it reallocate the burden of COVID-19. The advances constitute but a percentage of the compensation typically earned by providers. Requiring DSM to make these advances merely recognizes DSM's role in a partnership that is called upon to weather this challenge together.

The longer term relief, described in Section 156.04 of the proposed regulation, would reinstate the reimbursement methodology that immediately preceded DSM's adoption of its new methodology, whose principal effect is to lower the rates paid to participating providers. It is becoming increasingly clear that the return to practicing dentistry is going to take time and is going to require investment in new procedures, protocols, and personal protective equipment (PPE) to

safeguard the health of providers and patients. The slow return to a more expensive form of practice is not the environment in which DSM should be slashing the reimbursement paid to providers. The “range of reasonableness” evolves with the realities of operating a dental practice. Reducing the compensation owed to providers at a time when running a dental practice is going to cost providers significantly more is inherently unreasonable. To better address the realities of the post-COVID-19 practice of dentistry and its impact on the range of reasonableness going forward, Section 156.04 provides for a re-adjustment of the fees paid to providers effective January 1, 2022, based on a public hearing at which evidence of the costs of operating a practice in the wake of the pandemic can be presented and considered.

Finally, Section 156.04 provides for the full reimbursement to practices of the use of PPE to ensure a standard of provider and patient safety in line with the recommendations of the Centers for Disease Control and the ADA.

VI. CONCLUSION

Dental health requires a healthy network of dental providers. This network is on the verge of suffering imminent and irreparable harm. DSM is in a unique position to support and sustain this network that has supported it for decades. MDS respectfully requests the Division to adopt the accompanying emergency regulations that will see DSM leverage that position and support its providers.

MASSACHUSETTS DENTAL SOCIETY

By its attorneys,



Derek B. Domian (BBO No. 660568)
Goulston & Storrs P.C.
400 Atlantic Avenue
Boston, MA 02110
(617) 574-6568
ddomian@goulstonstorrs.com

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