

Delta Dental Material Modification Filing Regarding Moda

Delta Dental of California (Delta Dental) filed notice with the Department of Managed Health Care (DMHC) on September 6, 2018, to purchase a 50 percent interest in Moda, Inc, (Moda) an Oregon insurance company. Moda is currently owned by Oregon Dental Services (Delta Dental Plan of Oregon).

Delta Dental is a DMHC-licensed plan and reported approximately 25,043,000 dental enrollees as of September 30, 2018. Moda is not a DMHC-licensed plan.

This FAQ provides information on the DMHC's authority and review of this filing.

What is the DMHC authority to review this transaction?

The DMHC's authority comes from the Knox-Keene Health Care Service Plan Act of 1975, which is often referred to as the Knox-Keene Act (California Health and Safety Code (HSC) § 1340 et seq). The Knox-Keene Act contains a number of triggers¹ that require health plans to receive approval from the DMHC before a plan can take the proposed action, including:

- expanding the plan's approved service area;
- entering into a new market (e.g., the large group market when the plan previously was in the individual market only);
- merging or consolidating with another California-licensed health plan or selling all or substantially all of the plan's assets; and,
- making a change that would have a "material effect" on the plan or its operations.

With respect to Delta Dental's purchase of an interest in Moda, the DMHC is reviewing the transaction to ensure it will not have a "material effect" on the plan or its operations.

What does the DMHC examine during its review?

The DMHC reviews many issues to ensure compliance with the law. This may include reviewing proposed changes to organizational and administrative capacity, health care delivery system changes such as changes to the plan's provider networks, and product or subscriber contract changes. The DMHC also reviews the effect of the transaction upon the financial viability of the plan and the financing for the transaction.

Does this filing trigger a review under AB 595?

Assembly Bill 595 (Chapter 292, Statutes of 2018) by Assembly Member Jim Wood codifies and expands the DMHC's authority under existing law to oversee health plan mergers. The bill

¹ California Code of Regulations, title 28, section 1300.52.4, subdivision (d).

expands the DMHC's authority by permitting the department to conduct an independent impact analysis for all major mergers that have a significant impact on the state. The DMHC may also disapprove mergers if the merger would substantially lessen competition in health plan products.

AB 595 does not apply to Delta Dental's purchase of an interest in Moda because the purchase is not a merger, consolidation, or acquisition as defined by the statute. AB 595 applies only to transactions where a California-licensed health plan is being purchased or where the plan is merging or consolidating with another California-licensed health plan or insurer. In this case, Delta Dental is the purchasing entity, rather than the entity being purchased, and Moda is not a California-licensed health plan.

Delta Dental is proposing to purchase a percentage stake in Moda, and the DMHC is reviewing the proposal to determine whether that would have a "material effect" on Delta Dental or its operations.

Is Article 11 of the Knox-Keene Act triggered by this transaction?

Article 11 applies only to restructuring and conversions of nonprofit health plans that have assets subject to a charitable trust. The DMHC's review of this transaction includes whether or not Article 11 applies. At this point in our review, the Department has not found any evidence of Delta Dental having assets subject to a charitable trust. However, the Department's review is ongoing.

Is there a limit to how much Delta Dental can pay its CEO since it is a nonprofit?

The DMHC does not have the authority to set or limit the compensation a plan pays to its employees, including executive employees like a CEO.

Can the DMHC change Delta Dental's nonprofit status?

The DMHC does not have the authority to change a health plan's nonprofit status.

Is there a time limit to the DMHC's review?

Generally, a proposal representing significant changes to a licensed health plan's operations will require a notice of material modification filing pursuant to HSC sections 1352, subdivision (b), and 1354, and California Code of Regulations, title 28, section 1300.52.4, subdivision (d).

The notice must be filed before a plan implements the change in question. Filings of this type often require the DMHC to engage in a back-and-forth dialog with the plan to ensure compliance with the law, and to determine there will not be negative impacts to enrollees, plan contracted providers, or the public generally. The DMHC can approve or deny filings. Only when the Department is satisfied that a proposed filing complies with the law will the DMHC issue an order of approval.

There is no specific time limit to the DMHC's review, and its review of this filing is ongoing.