



Department of Justice

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AT
(202) 616-2771
TDD (202) 514-1888

**JUSTICE DEPARTMENT CHALLENGES RHODE ISLAND DENTAL GROUP'S
AGREEMENTS THAT DISCOURAGE DISCOUNTING**

WASHINGTON, D.C. -- The Department of Justice filed an antitrust suit today against Rhode Island's largest dental care insurer for using unlawful agreements that discourage dentists from offering discounts to patients covered by other insurance companies and to uninsured patients who need dental care.

This is the Department's fourth case challenging such contract provisions, which are known in the industry as "most favored nation" clauses.

Delta Dental of Rhode Island, which is headquartered in Providence, is the state's largest dental care insurance plan, collecting \$48 million in premiums in 1994.

The Department alleged that Delta Dental reduced discounting and price competition for dental services under agreements with dentists that had the effect of preventing dentists from cutting fees below those offered in the Delta Plan. The agreement, in effect, required any dentist caring for patients insured by Delta Dental to charge those patients no more than the dentist charged any other patient, whether insured or not.

"The Department's lawsuit seeks to ensure that Rhode Island consumers will have access to a wider choice of dental care insurance plans and will enjoy the benefits of increased price competition among dentists in the state," said Anne

K. Bingaman, Assistant Attorney General in charge of the Department's Antitrust Division.

Since about 90 percent of dentists in Rhode Island serve Delta Dental patients, and since most of these dentists derive a significant portion of their income from caring for these Delta patients, they face the prospect of reducing their income significantly if they offer any other patient a lower fee than they charge to Delta Dental patients, the Department said.

"Delta Dental's use of the most favored nation clause restricts price competition among dentists in Rhode Island by providing a strong disincentive for dentists to discount fees for dental care for any patient," said Bingaman. "The clause also makes it harder for other plans that could compete with Delta Dental to open up shop in Rhode Island, by making it harder for them to negotiate a favorable fee schedule with local dentists."

According to the Department, so-called preferred provider organizations are among those significantly affected by the Delta Dental practices targeted by the lawsuit. Preferred provider plans identify a limited group of dentists for their clients to be treated by and negotiate discounted prices with those dentists.

"There should be room in the marketplace for both preferred provider organizations and plans like Delta Dental," said Bingaman. "PPOs work by negotiating discounted fees from selected dentists in return for steering plan members toward the dentists selected. Delta Dental's most favored nation clause, by impeding the ability of PPOs to negotiate such arrangements, jeopardizes the access of PPOs to willing Rhode Island dentists, thereby impeding Rhode Island consumers access to this low-cost type of dental coverage."

The Department's civil antitrust suit was filed in U.S. District Court in Providence, Rhode Island.

In 1994 and 1995, the Department challenged similar types of clauses in two other statewide dental insurance plans and in a national vision care plan.

The Department filed a complaint and proposed settlement with Delta Dental Plan of Arizona Inc. in August 1994 that eliminated the most favored nation clause and prevented Delta Dental from engaging in other actions that limited future discounting by Arizona dentists. The settlement was entered with the Court in May 1995.

In April 1995, the Department filed a complaint and proposed settlement with Oregon Dental Services involving similar charges. The settlement, which brought the same relief, was entered with the Court in July 1995.

In December 1994, the Department filed a complaint against Vision Service Plan--a national vision care insurer--involving similar charges that made optometrists unwilling to cut their prices or offer discounts on vision care services. The proposed settlement, which eliminates the most favored nation clause and prevents Vision Service Plan from engaging in other actions that limits future discounting by participating doctors, is still pending with the Court.

The Department said that today's case is particularly significant because it is being filed in the jurisdiction where the Ocean State case was decided.

In Ocean State, the First Circuit Court of Appeals, in 1989, reviewed a challenge by Ocean State Physicians Health Plan to Blue Cross and Blue Shield of Rhode Island's use of a most favored nation clause. The First Circuit held that, under the circumstances, Blue Cross's most favored nation clause did not violate the antitrust laws.

Bingaman said that the Ocean State case has been widely misread as holding that most favored nation clauses are almost always legal under the antitrust laws.

"The Department is filing this case because it is convinced that some most favored nation clauses, such as the one challenged in this case, have substantial anticompetitive effects and that Ocean State is not inconsistent with that conclusion," said Bingaman.

"We remain committed to ensuring that anticompetitive practices do not block consumers' access to affordable health care," added Bingaman.

The Department's investigation into similar agreements in the health care industry is continuing.

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