

## **Notice of Amended Class Action Settlement Agreement and Final Approval Hearing**

*California Dental Association, et al. v. Delta Dental of California,*  
San Francisco County Superior Court, No. CGC-14-538849

**If You Were a Dentist in the Delta Dental Premier® Network  
in California from January 1, 2011 through December 27, 2017,  
You May Be Eligible for Benefits from a Class Action Lawsuit**

A Proposed Amended Settlement has been reached in a class action lawsuit brought on behalf of Delta Dental Premier dentists against Delta Dental of California (“Delta Dental”). The lawsuit claims that Delta Dental breached the terms of dentists’ Participating Dentist Agreements (“PDA”) with Delta Dental for participation in its Premier network (“Premier Dentists”) in determining fees and fee limits, and in amending the PDA and how it communicated those amendments to Premier Dentists. Delta Dental denies all wrongdoing.

The Proposed Amended Settlement takes the place of and supersedes a previous proposed settlement between the parties, as to which the Superior Court previously granted preliminary approval on April 21, 2017. That previous settlement agreement was the subject of a previous Notice similar to this one that was published in the California edition of USA Today on May 12, 2017. This Notice takes the place of and supersedes that previous Notice.

### **Who are the Class Representatives?**

The lawsuit was brought by the following class representatives: California Dental Association (“CDA”), Dr. Richard W. Barnes, Dr. Robert E. Reed, Dr. Dean Schweitzer, Dr. Gerald Middleton, Dr. Whitney Johnson, Dr. Terrence Y. Lau, and Dr. Barbara M. Hawthorne. Each of the individual representatives is a member of the Class. CDA is serving as a class representative because many Class Members are members of CDA.

### **Am I included in the Proposed Amended Settlement?**

If you were a Delta Dental Premier Dentist who had a PDA with Delta Dental anytime from January 1, 2011 through December 27, 2017, you are a member of the Class. The lawsuit does not involve, and the Class does not include, patients who are or were enrollees in dental plans offered by Delta Dental of California.

### **Why is there a Proposed Amended Settlement?**

The Court preliminarily approved the initial settlement on April 21, 2017. After the initial Class Notice was issued, the parties discovered a miscalculation in the amount at issue, which they brought to the Court’s attention. On June 8, 2017, the Court ordered the parties to determine the correct amount at issue, and if necessary to determine an Amended Settlement Amount. The parties did so and now are seeking preliminary approval of the Proposed Amended Settlement.

### **What does the Proposed Amended Settlement provide?**

The Proposed Amended Settlement requires Delta Dental to provide 120 calendar days’ notice if it makes reductions in maximum amounts allowed for Contracted Fees or reductions in fee reimbursements generally applicable to Premier Dentists, to identify the Current Dental Terminology (“CDT”) Codes being affected, and to provide each affected Premier Dentist with an individualized calculation of the potential financial impact of such reductions on his/her practice. Please note that if you signed a PDA with Delta Dental on or after May 1, 2017, your PDA already contains these amendments.

In addition, Delta Dental will pay up to a total of \$65,029,299 (the “Amended Settlement Amount”), rather than the initial settlement amount of \$34,750,000, to Premier Dentists who do not opt out of the Proposed Amended Settlement and who received reduced payments for dental services performed during the period from January 1, 2011 through September 14, 2017, and processed through December 31, 2017, because Delta Dental applied an inflation adjustment percentage (“INAP”) to limit their requests for fee increases during that period. Class Members whose payments were not limited by the INAP or who elect to opt out of the Proposed Amended Settlement will not receive any portion of the Amended Settlement Amount.

### **How will the Amended Settlement Amount be allocated among Class Members?**

Class Counsel and experts working for the Class have developed a methodology for allocating the Amended Settlement Amount among Class Members using Delta Dental’s available records. In general, the amount allocated to each Class Member will be a share of the Amended Settlement Amount that is proportionate to the INAP impact on the Class Member, based on determinations using available data, when compared to the total INAP impact on the entire Class. Once determined, the allocations will be deemed final and not subject to legal challenge.

Based on current calculations and available data, it is currently estimated that approximately 14,300 Class Members will be allocated a portion of the Amended Settlement Amount. Of these, approximately 6,300 are estimated to be allocated the minimum of \$500 and approximately 8,000 are estimated to be allocated amounts ranging from \$500 to approximately

\$465,000. The average allocation from the Amended Settlement Amount is currently estimated to be approximately \$4,500. Recipients of distributions from the Amended Settlement Amount will be sent a Form 1099-MISC.

Allocations not relating to a Settlement Class Member's fee payments from Delta Dental directed to a group practice will be distributed directly to the Settlement Class Member. In connection with allocations relating to a Settlement Class Member's fee payments to a group practice in the normal course of business, the Class Member and the group practice will receive a notice informing them that unless either party objects the distribution will be made to the group practice. If either party objects, the payment will be held until the disagreement is resolved by agreement or a court order. Once the allocations and distributions have been determined, they will be deemed final and not subject to legal challenge.

Distributions from the Amended Settlement Amount will be made within 120 calendar days from the date that the Proposed Amended Settlement becomes effective. Any distributions from the Amended Settlement Amount that remain outstanding (e.g., checks that are uncashed) for more than 90 days after being mailed will be paid to the CDA Foundation Student Loan Repayment Program. Those funds will be made available to and awarded to California dentists regardless of whether they are members of CDA.

Also, in addition to the Amended Settlement Amount, Delta Dental will separately pay an award of attorney's fees and expenses to Class Counsel up to \$2,350,000 and service awards of up to \$3,500 to each of the individual Class Representatives, subject to Court approval. Class Counsel will file a motion for approval of the attorney's fees and expenses and service awards no later than February 16, 2018.

Delta Dental will bear the costs of administering the Amended Settlement Amount. However, under certain circumstances, Delta Dental will establish a Qualified Settlement Fund ("QSF") as provided in the Proposed Amended Settlement, into which the Amended Settlement Amount, or a portion of it, and any award of attorney's fees and expenses and service awards shall be deposited. Costs and expenses for the operation and administration of the QSF, if one is established, including but not limited to fees and expenses for any claims administrator fees and expenses relating to the distribution of the Amended Settlement Amount, which are currently estimated to be less than \$100,000, will be paid out of the QSF.

#### **How do I get benefits?**

You do **not** need to file a claim to participate in the Proposed Amended Settlement. The Amended Settlement Amount will be allocated and distributed in the manner described above, using the fee and claims information that is available in Delta Dental's records.

#### **What are my other rights?**

Remain in the Proposed Amended Settlement: If you do nothing, you will remain in the Proposed Amended Settlement. You will be bound by the terms of the Proposed Amended Settlement and give up your right to sue Delta Dental about the claims in this case. You may be eligible to receive a distribution or benefits as described in this Notice.

Object to the Proposed Amended Settlement: If you stay in the Proposed Amended Settlement but still wish to object to it, you must submit a written objection by March 5, 2018. The Court will consider only written objections.

Opt Out of the Proposed Amended Settlement: If you do not want to be legally bound by the Proposed Amended Settlement and want to retain your right to sue, you must exclude yourself by March 5, 2018. If you opt out, you will not receive any distribution from the Amended Settlement Amount, and will not be represented by Class Counsel. However, your status as a Delta Dental Premier Dentist will not be affected.

Attend the Hearing: The Court will hold a hearing on April 25, 2018 at 1:30 p.m. to determine whether to grant final approval to the Proposed Amended Settlement. The Court will also consider the application for attorney's fees and service awards at this hearing. Anyone can attend this hearing and any Class Member who has not opted out may address the Court at the Final Approval Hearing. Substantive objections must be submitted in writing to the Class Notice Administrator by March 5, 2018.

**The complete Proposed Amended Settlement Agreement, long-form Amended Class Notice, and other documents pertinent to the Proposed Amended Settlement can be accessed at [www.DeltaDentalofCaliforniaSettlement.com](http://www.DeltaDentalofCaliforniaSettlement.com) or by contacting Rust Consulting at**

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