

Director Shelley Rouillard  
Department of Managed Health Care  
980 9th Street, Suite 500  
Sacramento, California 95814

December 3, 2018

Dear Ms. Rouillard,

Consumer Reports, California Pan-Ethnic Health Network, Health Access, and the Western Center on Law and Poverty write to you regarding the proposed acquisition of Moda Health Plan by Delta Dental of California.<sup>1</sup> As you know, Delta Dental is a tax-exempt nonprofit dental plan while Moda Health Plan is a for-profit health insurer. This type of transaction raises potential concerns for our organizations, and the consumers we serve. We write to urge the Department to conduct a rigorous review of this merger and to ensure that assets intended for community benefit cannot be directed to profit-generating purposes. Given the significant redeployment of health plan assets and its potential effect on patients and the community, we also request a public hearing.

A key consideration in reviewing major transactions by nonprofit plans is whether California Knox-Keene Health Care Service Plan Act Article 11 applies. Article 11 is intended to safeguard the use of nonprofit assets for community benefit. With \$154 million proposed to be spent on this acquisition, and the corporation's nonprofit focus potentially diluted as a result of it, it is critical that the nonprofit assets involved are protected.

Dental Dental argues that the transaction meets the §1399.71(e)(3) exemption from Article 11. We are not convinced. Instead, we urge the Department to make the following inquiries, based on the requisites of §1399.71(e)(3).

- How is a \$154 million investment in Moda, in return for a 50 percent stake in the business, “fundamentally consistent with the public benefit, charitable, or mutual benefit purpose of”<sup>2</sup> this dental plan? Delta Dental told the Department that it “has a strategic interest in moving toward the bundling of medical and dental offerings in a manner that will increase the sale of dental benefits” and that “the investment by the Plan falls within its stated corporate purpose and is consistent with its status as a nonprofit mutual benefit corporation.”<sup>3</sup> Yet that misses the mark when it comes to Article 11 – the acquisition must continue to meet its nonprofit public benefit obligations<sup>4</sup> and continuing to do so must be front-of-mind rather than an afterthought to corporate interests.

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<sup>1</sup> In September, 2018, Delta Dental filed with the Department of Managed Health Care its intent to give \$154 million to Moda health plan in exchange for a 50 percent holding in the health plan.

<sup>2</sup> Health and Safety Code §1399.71(e)(3)(B).

<sup>3</sup> Exhibit E-1 Attachment A (Comment Table), pp. 5,6.

<sup>4</sup> Health and Safety Code §1399.71(b)

- Similarly, it is not clear to us that this acquisition “furthers [Delta Dental’s] ability to fulfill its public benefit, charitable, or mutual benefit purposes.”<sup>5</sup> We question how the joint venture would advance a mission of expanding the affordability and accessibility of dental care to uninsured or underinsured populations, and what each partner organization would do to achieve this goal. In addition, how would Delta Dental, or the Department, evaluate the success of the joint venture, in terms of improving access to affordable dental coverage, in California?
- Does Delta Dental propose to spend fair market value to acquire Moda?<sup>6</sup> We urge the Department to seek its own independent analysis of the fair market value for this acquisition. Given Moda’s potentially distressed financial state – the plan was put under extra state supervision in Oregon in 2016 due to its precarious financial footing – we also urge the Department to confirm due diligence was conducted prior to this investment, and that Delta Dental is not risking loss of its investment or having to inject additional funds to protect its investment. Further, we encourage the Department to investigate how Delta Dental would monitor the financial and social impact performance of the investment and/or joint venture
- Will this acquisition result “in the provision of services, goods, or insurance to or for the benefit of the plan or its members, enrollees, or groups”<sup>7</sup>? Delta Dental enrollees currently use the plan to access dental care; how will acquiring a health plan benefit Delta Dental enrollees? We urge the Department to obtain an independent analysis of the impact of the acquisition on subscribers and enrollees, the stability of the health care delivery system, and other relevant provisions of this chapter, as will be required under AB 595 starting on January 1, 2019.

To be exempted from Article 11, a health plan must meet each of the six requisites of §1399.71(e)(3). We strongly urge the Department to follow the above lines of inquiry, as well as any other inspection it deems necessary, to properly protect consumers from potentially harmful outcomes of this acquisition.

A \$154 million investment may not be a heavy lift for a corporation with \$3.75 billion in revenue in 2017,<sup>8</sup> over a billion dollars in assets,<sup>9</sup> and a robust tangible net equity (TNE)-to-required net equity ratio of 1283.24%. Yet, that sizeable surplus comes on the backs of consumers who could instead have lower premiums or more comprehensive coverage, especially given that the absence of a dental loss ratio (DLR) requirement in California means that Delta Dental is under no obligation to maintain a reasonable ratio of claims expenses versus profit and salaries. If instead their dollars are invested in a for-profit health plan, it is critically important that these premium dollars are spent wisely and appropriately. Additionally, with a nearly-fourfold spike in

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<sup>5</sup> Based on Health and Safety Code §1399.71(e)(3)(E).

<sup>6</sup> Based on Health and Safety Code §1399.71(e)(3)(D).

<sup>7</sup> Based on Health and Safety Code §1399.71(e)(3)(F).

<sup>8</sup> Department of Managed Health Care, Health Plan Financial Summary Report.

<sup>9</sup> Department of Managed Health Care, Health Plan Financial Summary Report.

enforcement actions by the Department against Delta Dental in 2017,<sup>10</sup> it is imperative that the plan address the problems that surfaced that year, and that the Department ensure that this acquisition would not be a distraction from that.

Finally, as part of its evaluation, and especially in crafting any undertakings that may emerge from this acquisition, we urge the Department to evaluate the extent to which the charitable activities of Delta Dental of California meet (or do not meet) its obligations as a 501(c)(4) organization whose corporate purpose is the promotion of social welfare. Although the dental plan touts its position among the top 50 corporate philanthropists in the Bay Area,<sup>11</sup> the \$5.5 million it donated in the state between 2011 and 2018<sup>12</sup> is a small fraction of the amount that Dental Dental intends to invest in acquiring a stake in Moda. In addition, if this acquisition is a social welfare activity for both organizations, the Department should determine during the review process how this acquisition furthers the social welfare. If Delta Dental is investing, we urge the Department to identify how the public interest will be protected in the joint venture of Delta Dental and Moda, and that this representation should be legally binding on the organization.

Thank you, in advance, to the Department for exercising caution in reviewing this acquisition. Although the parties to the acquisition may urge a speedy review process, rigorous review and oversight are far more important than speed.

Sincerely,

Consumer Reports  
California Pan-Ethnic Health Network  
Health Access  
Western Center on Law & Poverty

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<sup>10</sup> Department of Managed Health Care, Web Portal: Enforcement Actions by Organization, accessed November 29, 2018.

<sup>11</sup> Delta Dental Press Room, *Delta Dental of California Among Top 50 on San Francisco Business Times' 2018 Bay Area Corporate Philanthropists list*, (September 5, 2018).

<sup>12</sup> *Id.*