REPORT ON EXAMINATION

OF

DELTA DENTAL OF NEW YORK, INC.

AS OF

DECEMBER 31, 2006

DATE OF REPORT **JUNE 21, 2010**

EXAMINER **TOMMY KONG**

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

James J. Wrynn
Superintendent

Honorable James J. Wrynn
Superintendent of Insurance
Albany, NY 12257

June 21, 2010

Sir:

Pursuant to the provisions of the New York Insurance Law and acting in accordance with the instructions contained in Appointment Number 22651, dated August 3, 2007, attached hereto, I have made an examination into the condition and affairs of Delta Dental of New York, Inc., a dental expense indemnity company licensed pursuant to the provisions of Article 43 of the New York Insurance Law, as of December 31, 2006, and respectfully submit the following report thereon.

The statutory home office of Delta Dental of New York is located at 575 Madison Avenue, New York, NY 10022. The examination was conducted at the Plan's administrative office located at One Delta Drive, Mechanicsburg, Pennsylvania 17055.

Wherever the designations "DDNY" or "the Plan" appear herein, without qualification, they should be understood to indicate Delta Dental of New York, Inc.

Wherever the designation, "the Department" appears herein, without qualification, it should be understood to refer to the New York Insurance Department.

1. SCOPE OF EXAMINATION

Delta Dental of New York, Inc. was previously examined as of December 31, 2002. This examination covers the four-year period from January 1, 2003 through December 31, 2006. Transactions subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities as of December 31, 2006, in accordance with Statutory Accounting Principles (SAP) as adopted by the Department, and a review of income and disbursements deemed necessary to accomplish such verification. The examination also utilized, to the extent considered appropriate, work performed by the Plan's independent certified public accountants.

A review or audit was also made of the following items as called for in the *Examiners Handbook of the National Association of Insurance Commissioners* (NAIC):

History of the Plan
Management and controls
Corporate records
Fidelity bonds and other insurance
Territory and plan of operation
Reinsurance
Accounts and records
Financial statements
Market conduct activities

This report on examination is confined to financial statements and comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require explanation or description. A review was also made to ascertain what action was taken by the Plan with regard to comments and recommendations in the prior report on examination**.**

2. DESCRIPTION OF THE PLAN

The New York Dental Service Corporation, which was organized by the Dental Society of New York, was certified by New York State in 1963 and licensed by the Department at that time, as a dental expense indemnity corporation, under the provisions of New York Insurance Law Section 252 (currently §4302). The Plan commenced business in 1963.

On March 30, 1994, the New York Dental Service Corporation changed its name to Delta Dental of New York, Inc.

The purpose of the Plan is to establish, maintain and operate a non-profit dental service plan, whereby dental care may be provided to groups whose members become subscribers. Such care is furnished by dentists, duly licensed to practice under the laws of the State of New York, who may have contracts with the Plan to provide dental care to its subscribers.

A. Management and Controls

Pursuant to the Plan's charter and by-laws, the board of directors is charged with the general direction of the Plan, consisting of not less than thirteen members. As of the examination date, the board of directors was comprised of sixteen members. The board met four times during each calendar year covered by the examination period.

The members of the Plan's board of directors as of December 31, 2006, were as follows:

Name and Address	Principal Business Affiliation
Henry R. Amen, D.D.S. Brooklyn, NY	Dentist
Herman L. Bosboom, D.D.S. New York, NY	Dentist
Thomas D. Coiro Commack, NY	Retired
Anthony L. DiMango, M.D. Brooklyn, NY	Retired
Thomas M. Halton, D.M.D. Roslyn Harbor, NY	Dentist
Barbara R. Katersky New York, NY	Retired
James F. Larkin, Jr. New York, NY	Benefits Manager, Nippon Express USA, Inc.
Andrew S. Levine, D.D.S. Saratoga Springs, NY	Dentist
Roger A. Maglio Copake, NY	Retired
Gerard E. McGuirk, D.D.S. Goshen, CT	Chairman of the Board and Dentist, Delta Dental of New York
Thomas J. McCartin New York, NY	President, Warren / Kremer / Paino
Alan Patrignani, D.D.S Williamsville, NY	Dentist
Jack D. Semler Prospect Heights, IL	Retired

Name and Address	Principal Business Affiliation
William Thomas New York, NY	Assistant Manager for Business Affairs, Metropolitan Opera at Lincoln Center
Jozef C. Verbraeken Rhinebeck, NY	Retired
Thomas H. Wysmuller Saugerties, NY	Advisor, Wysmuller Corporation

The minutes of all meetings of the board of directors and committees thereof held during the examination period were reviewed. All such meetings were well attended, with all board members attending at least one-half of the meetings they were eligible to attend.

The officers of the Company as of December 31, 2006, were as follows:

Name	Title
Mr. Gary D. Radine	President / Chief Executive Officer
Mr. Michael J. Castro	Chief Financial Officer
Mr. Anthony S. Barth	Senior Vice President

DDNY was acquired by Dentegra Group, Inc. in 2001, without the Department's prior approval. This was effectuated by DDNY changing its by-laws to transfer the membership voting rights of its directors to the directors of the Dentegra Group, Inc. Upon learning of this change, the Department asked DDNY to submit an application for change of control. The Plan then submitted to the Department for review, all of the agreements that would have been in its holding company structure had it proceeded with the above proposal, however, DDNY withdrew its application and rescinded the

resolutions. Therefore, DDNY is not considered to be a controlled insurer as defined by Section 1506 of the New York Insurance Law.

The Plan is managed through the operations of a General Agency Agreement (GAA) between DDNY, PaCa Management, LLC (PaCa), Delta Dental of Pennsylvania (DDP), and Delta Dental Insurance Company (DDIC). Through the agreement, DDP accepts the responsibility of providing general administration to the Plan, for an administration fee.

Under a separate administrative services agreement, all of DDP's responsibilities are ultimately passed to PaCa Management, LLC (PaCa), a limited liability company organized under the laws of the State of Delaware, with principal offices in Wilmington, Delaware. PaCa, which is owned jointly by Delta Dental of California (DDC) and DDP, was formed to administer and support DDNY.

The Plan is also a party to a separate agreement, the DeltaCare USA Administration Agreement (DAA), with PaCa, whereby PaCa administers the management of the DeltaCare USA (DUSA) program, a dental health maintenance organization. Under the DUSA program, Plan enrolless can visit participating providers and pay only a fixed co-payment.

It should be noted that under the DAA, the administrator sells capitated coverage to groups outside of New York State. In many cases, these groups have members within New York State. For these members, PaCa has been paying a fee to the Plan, in return for which, the Plan has been providing dental services to the New York members through its capitated network, and performing certain administrative functions.

B. Section 1307 Loans

The Plan had Section 1307 (New York Insurance Law) Loans in the amount of $360,000 as of December 31, 2006.

The Section 1307 Loans included $200,000 provided on 10/10/96 by Delta Dental Plans Association (DDPA) and $160,000 provided on 9/30/03 by DDP. As provided by Section 1307, such loans shall only be repaid out of free and divisible surplus of such insurer (DDNY), with the prior approval of the New York State Superintendent of Insurance.

During the examination period, the Plan, in 2003, erroneously wrote off the Section 1307 Loans in the aggregate amount of $464,700, without the Department's approval. These surplus notes were held by DDPA. After several discussions with the Department, this amount was restored in 2004. In 2005, the Plan requested permission to write off the 1307 Loans held by DDPA, since DDPA was willing to forgive the repayment of the surplus notes. On April 14, 2005, the Department granted permission for the forgiveness of the surplus notes, and the entire amount of $464,700 was written off. The above transaction was accounted for as a capital infusion in the Plan's 2005 financial statements.

Subsequent to the examination period, the Plan obtained an additional $1,000,000 Section 1307 Loan from DDP in 2008. Such Section 1307 Loan was approved by the Department on November 24, 2008. As of December 31, 2008, outstanding Section 1307 Loans totaled $1,360,000 with aggregate accrued interest thereon totaling $284,500.

C. Territory and Plan of Operation

The Plan is licensed to sell dental insurance in all counties of New York State. The Plan's direct premiums written for the examination period were as follows:

Calendar Year	Direct Premiums Written
2003	$ 8,647,732
2004	9,513,097
2005	11,789,445
2006	20,702,548

DDNY offers dental indemnity and managed care contracts. As mentioned earlier in this report, the Plan's managed care arrangement is offered under the DeltaCare USA program, a dental health maintenance organization. With this type of contract, DDNY pays a monthly capitation fee to contracted providers who provide services to enrolled members who pay a fixed co-payment at the time of service. While the dentists who participate in this program accept some risk, the risk is mitigated through the Plan's "Chair Hour Guarantee" program, which guarantees that providers will receive a certain income based upon the relative value units of the procedures performed.

The Plan does not offer coverage under individual or government programs and thus does not participate in the Healthy New York program. Small group indemnity coverage sold directly by the Plan is limited to those with at least five members. Since January and February of 2007, small groups with two to four members can purchase indemnity coverage through two contracted independent third party administrators (TPAs), Gettysburg Insurance Services Industry Trust, based in Gettysburg, Pennsylania and Morgan White Group (MWG), based in Jackson, Mississippi, respectively. Of these

two TPAs, only MWG offers individual indemnity coverage. The DeltaCare USA product is available both to individuals and groups with at least five members.

The Plan acts as a third party administrator for Cost Plus (administrative service only) Contracts, wherein purchasers are billed for all of the claims that are paid, plus an adminstrative fee, which is either a percentage of claims paid or a fee per eligible enrollee.

The following chart shows the Plan's enrollment, by year, during the examination period:

Date	Enrollment
December 31, 2003	150,143
December 31, 2004	174,168
December 31, 2005	207,178
December 31, 2006	203,675

The Plan sells its policies using an internal sales force, as well as independent brokers.

D. Reinsurance

At December 31, 2006, the Plan maintained two quota share reinsurance treaties with Delta Reinsurance Company Inc. (DRC), an authorized reinsurer. Treaty No. 3-1-1-88 provides that DRC reinsure DDNY's traditional and discounted fee-for-service programs, Delta Premier, and Delta Preferred Option, respectively. Under Treaty No. 10-1-1-98, DRC reinsured all of DDNY's emergency, specialist, and Chair Hour Guarantee payments in the DeltaCare program. These treaties both call for DDNY to cede 75% of the risk for all policies issued.

The treaties contain an insolvency clause conforming to the requirements of New York Insurance Law §1308. With DRC as the applicant, the Plan is provided with a clean and irrevocable letter of credit issued by M&T Bank. The value of the letter of credit as of the examination date was $50,000. The letter of credit, originally issued on April 7, 1988, is renewed annually. A trust agreement is incorporated in the reinsurance treaty to define the terms and conditions under which the letter of credit may be drawn.

E. Significant Operating Ratios

The underwriting ratios presented below are on an earned-incurred basis and encompass the four-year period covered by this examination:

	Amounts	Ratios
Claims (Net of Reinsurance Recoveries)	$165,521,484	86.39%
Claim adjustment expenses	10,670,259	5.57%
General administrative expenses	14,218,114	7.42%
Net underwriting gain	1,196,805	0.62%
Premium	$191,606,662	100.00%

As of the examination date, the following ratios were considered outside of the Department's benchmarks:

Description	Result	Unfavorable Benchmark
Liabilities to Liquid Assets Ratio	111.74%	Above 105%

F. Investment Activities

The Plan invests only in short-term obligations, guaranteed as to interest and principal by the government of the United States. Such investment transactions have been approved by the Plan's board of directors.

There have been no internal audit reports related to investments.

The Plan maintains a custodial agreement with PNC Bank. The agreement is in compliance with the covenants suggested by the Department and the NAIC.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as determined by this examination as of December 31, 2006. This statement is the same as the balance sheet filed by the Plan in its December 31, 2006 annual statement:

Assets	Examination	Plan
Bonds	$ 1,205,807	$ 1,205,807
Common stocks	500,000	500,000
Cash	7,377,531	7,377,531
Premiums due and unpaid	574,541	574,541
Amounts recoverable from reinsurers	1,746,357	1,746,357
Amounts receivable relating to uninsured health plans	2,811,194	2,811,194
Other receivables	11,315	11,315
Total assets	$14,226,745	$14,226,745
Liabilities		
Claims unpaid	$ 1,204,200	$ 1,204,200
Unpaid claims adjustment expenses	662,641	662,641
Premiums received in advance	215,038	215,038
General expenses due and accrued	746,962	746,962
Ceded reinsurance premiums payable	4,888,599	4,888,599
Amounts withheld or retained for account of others	567,578	567,578
Funds held under reinsurance treaties	2,000,000	2,000,000
Liability for amounts held under uninsured accident and health plans	285,321	285,321
Amount due retention group	221,088	221,088
Total liabilities	$10,791,427	$10,791,427
Surplus		
Surplus notes	$ 360,000	$ 360,000
Statutory reserve	2,505,085	2,505,085
Unassigned funds (surplus)	570,233	570,233
Total surplus	$ 3,435,318	$ 3,435,318
Total liabilities and surplus	$14,226,745	$14,226,745

Note 1: According to the Plan, the Internal Revenue Service has not made any audits of the Plan's federal income tax returns through tax year 2006. The examiner is unaware of any potential exposure of the Plan to any further tax assessment and no liability has been established herein relative to such contingency.

Note 2: No liability appears on the above statement for loans in the amount of $360,000 and no interest has been accrued. The loans were granted pursuant to the provisions of Section 1307 of the New York Insurance Law. As provided in Section 1307, repayment of principal and interest shall only be made out of free and divisible surplus, subject to the prior approval of the Superintendent of Insurance of the State of New York. See Section 2B of this report for further description.

B. Statement of Revenue, Expenses and Surplus

Surplus increased $2,387,964 during the four-year examination period, January 1, 2003 through December 31, 2006, detailed as follows:

Revenue		
Premiums earned (net of reinsurance)	$203,556,345	
Risk revenue	1,695,857	
Net investment income	894,097	
Reinsurance ceded	(154,59,380)	
Total revenue		$51,546,919
Expenses		
Claims incurred	$ 165,521,484	
Claims adjustment expense	10,670,259	
Risk medical benefits	445,520	
Administrative expenses	14,218,114	
Aggregate write-ins	(285,760)	
Reinsurance recoverables	(141,399,360)	
Total expenses		49,170,257
Net gain from operations		$ 2,376,662

Change in Surplus

	Gains in Surplus	Losses in Surplus	
Surplus, per report on examination as of December 31, 2002			$1,047,353
Net gain from operations	$2,376,662		
Change in non-admitted assets		$(148,698)	
Change in surplus loans		(304,700)	
Surplus notes forgiven	464,700		
Rounding	1		
Net increase in surplus			2,387,965
Surplus, per report on examination as of December 31, 2006			$3,435,318

4. CLAIMS UNPAID

The examination liability of $1,204,200 (net of reinsurance) is the same as the amount reported by the Plan as of December 31, 2006. Total claims unpaid were $4,816,798, of which $3,612,598 was ceded to an unauthorized reinsurer.

The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Plan's internal records and in its filed annual statements as verified during the examination.

5. MARKET CONDUCT ACTIVITIES

In the course of this examination, a review was made of the manner in which the Plan conducts its business and fulfills its contractual obligations to subscribers and claimants. The review was general in nature and is not to be construed to encompass the more precise scope of a market conduct examination.

The review was directed at the practices of the Plan in the following major areas:

A. Prompt Pay Law
B. Installment claim payments
C. Utilization review
D. Participating provider agreement
E. New York State United Teachers

A. Prompt Pay Law

A review of DDNY's Prompt Pay compliance was performed by using a statistical sampling methodology. This statistical sampling process was performed using the computer software program ACL.

For the purpose of this report, a "claim", as defined by DDNY, is the total number of items submitted by a single provider on a single claim form, as reviewed and entered into the claims processing system. This claim may consist of various lines, procedures or service dates. It was possible, through the use of ACL, to match or "roll-up" all of the procedures on the original claim form into one item, which was the basis of the Department's statistical sample of claims or the sample unit.

New York Insurance Law §3224-a, "Standards for prompt, fair and equitable settlement of claims for health care and payments for health care services" (Prompt Pay

Law), requires all insurers to pay undisputed claims within forty-five days of receipt. If such undisputed claims are not paid within forty-five days of receipt, interest may be payable.

§ 3224-a(a) of the New York Insurance Law states in part that:

> "…Except in a case where the obligation of an insurer to pay a claim submitted by a policyholder or person covered under such policy or make a payment to a health care provider is not reasonably clear, or when there is a reasonable basis supported by specific information available for review by the superintendent that such claim or bill for health care services rendered was submitted fraudulently, such insurer or organization or corporation shall pay the claim to a policyholder or covered person or make a payment to a health care provider within forty-five days of receipt of a claim or bill for services rendered."

§3224-a(b) of the New York Insurance Law states in part that:

> "…In a case where the obligation of an insurer or an organization or corporation licensed or certified pursuant to article forty-three of this chapter to pay a claim or make a payment for health care services rendered is not reasonably clear due to a good faith dispute regarding the eligibility of a person for coverage, the liability of another insurer or corporation or organization for all or part of the claim, the amount of the claim, the benefits covered under a contract or agreement, or the manner in which services were accessed or provided, an insurer or organization or corporation shall pay any undisputed portion of the claim in accordance with this subsection and notify the policyholder, covered person or health care provider in writing within thirty calendar days of the receipt of the claim:
>
> (1) that it is not obligated to pay the claim or make the medical payment, stating the specific reasons why it is not liable; or
>
> (2) to request all additional information needed to determine liability to pay the claim or make the health care payment.

§ 3224-a(c) of the New York Insurance Law states in part that:

> "…any insurer or organization or corporation that fails to adhere to the standards contained in this section shall be obligated to pay to the health care provider or person submitting the claim, in full settlement of the claim or bill for health care services, the amount of the claim or health care payment plus interest on the amount of such claim or health care payment of the greater of the rate equal to the rate set by the commissioner of taxation and finance for corporate taxes pursuant to paragraph one of subsection (e) of section one thousand ninety-six of the tax law or twelve percent per annum, to be computed from the date the claim or health care payment was required to be made. When the amount of interest due on such a claim is less than two dollars, an insurer or organization or corporation shall not be required to pay interest on such claim."

The examination performed testing to determine DDNY's compliance with the Prompt Pay Law. In order to accomplish this, a population consisting of all claims submitted between January 1, 2006 and December 31, 2006 that were not paid within 45 days of receipt were identified. The results of this process revealed that from the total population of 307,975 claims adjudicated in 2006, 223 claims took longer than 45 days to pay and all such claims had an interest amount due greater than two dollars. All 223 claims were selected to establish whether they were adjudicated in violation of the time frame prescribed by Section 3224-a(a) of the New York Insurance Law, and whether interest was properly calculated and paid as required by Section 3224-a(c) of said Law.

Of the 223 claims adjudicated after 45 days of receipt, 219 claims were deemed to be in violation of Section 3224-a(a) of the New York Insurance Law, and 217 of these claims were deemed to be in violation of Section 3224-a(c) of the New York Insurance Law.

The following charts illustrate DDNY's compliance with Sections 3224-a(a) and 3224-a(c) of the New York Insurance Law, respectively, as determined by this examination:

Summary of Violations of Section 3224-a(a) of the New York Insurance Law

Total claim population	307,975
Population of claims paid after 45 days of receipt	223
Sample size	223
Number of claims with violations	219
Calculated violation rate	**98.21%**
Upper violation limit	Not Applicable
Lower violation limit	Not Applicable
Calculated claims in violation	**219**
Upper limit claims in violation	Not Applicable
Lower limit claims in violation	Not Applicable

Note: The upper and lower violation limits represent the range of potential violations (e.g., if 100 samples were selected, the rate of violations would fall between these limits 95 times).

Summary of Violations of Section 3224-a(c) of the New York Insurance Law

Total claim population	307,975
Population of claims paid after 45 days of receipt	223
Sample size	223
Number of claims with violations	217
Calculated violation rate	**97.31%**
Upper violation limit	Not Applicable
Lower violation limit	Not Applicable
Calculated claims in violation	**217**
Upper limit claims in violation	Not Applicable
Lower limit claims in violation	Not Applicable

Note: The upper and lower violation limits represent the range of potential violations (e.g., if 100 samples were selected, the rate of violations would fall between these limits 95 times).

It is recommended that the Plan take steps to ensure compliance with Section 3224-a(a) of the New York Insurance Law.

Section 3224-a(a) violations resulted mainly from the Plan's incorrect methodology of computing the amount of days to pay a claim. To arrive at the 45-day period for payment, the Plan used the claim's receipt date aged to the date the claim was adjudicated, rather than the date that the claim was actually paid.

It is recommended that the Plan change its interest calculation to comply with the requirements of Section 3224-a(c) of the New York Insurance Law.

It should be noted that some of the violations of Section 3224-a(a) noted above, appeared to be a result of some claims examiner trainees not receiving adequate oversight while performing their assigned duties.

It is recommended that the Plan take steps to improve the supervision of its claims examiner trainees and ensure that claims are paid timely.

It is noted that subsequent to the examination, the Plan indicated that it had taken steps to ensure that adequate oversight would be provided to its claims examiner trainees.

Violations of Section 3224-a(b) of the New York Insurance Law were established through the isolation of all claims that took more than 30 days to either deny, or for the Plan to seek additional information. The results of the examiner's analysis revealed 552

possible violations. A sample of 167 claims was extracted from these 552 claims and reviewed. The Plan acknowledged that the entire sample (167) was denied in excess of 30 days of receipt, in violation of Section 3224-a(b) of the New York Insurance Law.

The following chart illustrates DDNY's compliance with Section 3224-a(b) of the New York Insurance Law as determined by this examination:

Summary of Violations of Section 3224-a(b) of the New York Insurance Law

Total claim population	307,975
Population of claims adjudicated after 30 days of receipt	552
Sample size	167
Number of claims with violations	167
Calculated violation rate	**100%**
Upper violation limit	Not Applicable
Lower violation limit	Not Applicable
Calculated claims in violation	**522**
Upper limit claims in violation	Not Applicable
Lower limit claims in violation	Not Applicable

Note: The upper and lower violation limits represent the range of potential violations (e.g., if 100 samples were selected, the rate of violations would fall between these limits 95 times).

It is recommended that the Plan take steps to ensure compliance with Section 3224-a(b) of the New York Insurance Law.

B. Installment Claim Payments

The Plan pays certain claims, like orthodontic claims, in installments. It was noted that subsequent installment payments were not paid until the provider or subscriber initiated contact with DDNY.

It is recommended that the Plan take steps to ensure (subsequent installment) payments are paid when due.

Subsequent to the examination date, the Plan installed a new system that will ensure that such claims are paid at their set dates.

C. Utilization Review

The Plan provides a handbook to groups that have a preferred provider organization, point-of-service, or Delta Premier product. These handbooks do not contain a description of the Plan's utilization review program.

§4324(a) of the New York Insurance Law (Disclosure of Information) states in part:

> "Each health service, hospital service, or medical expense indemnity corporation subject to this article shall supply each subscriber, and upon request each prospective subscriber prior to enrollment, written disclosure information, which may be incorporated into the subscriber contract or certificate, containing at least the information set forth below. In the event of any inconsistency between any separate written disclosure statement and the subscriber contract or certificate, the terms of the subscriber contract or certificate shall be controlling. The information to be disclosed shall include at least the following:
>
> (3) a description of utilization review policies and procedures, used by the corporation, including:

(A) the circumstances under which utilization review will be undertaken;
(B) the toll-free telephone number of the utilization review agent;
(C) the time frames under which utilization review decisions must be made for prospective, retrospective and concurrent decisions..."

It is recommended that the Plan revise its member handbook to include a description of its utilization review policies and procedures, in accordance with Section 4324(a)(3) of the New York Insurance Law.

Subsequent to the examination date, DDNY informed the Department that the Plan revised its member handbook to effect compliance with the abovementioned requirements regarding utilization review.

D. Participating Provider Agreement

During the examination period, the Plan initiated changes to its provider contracts. The main change to the participating provider contract was that reimbursement was based on the "Maximum Plan Allowance" rather than "Usual Customary and Reasonable" fees. This change was incorporated, as allowed in Section 13 of the participating provider contract, by a change to the by-laws of the Plan. The change to the by-laws was made in December 2003, and the changes to the contract wording were implemented in 2004.

The Plan notified the Department of the aforementioned change to the by-laws / participating provider contract, however, it did not appear that the Plan directly notified its participating providers. Although the contract change was not deemed an "adverse

reimbursement change to a contract" and did not appear to be more than semantic in nature, the Plan should have notified its participating providers of the contract change.

It is recommended that the Plan notify its participating providers of any change to their contract in a timely manner. Further, consideration should be given as to whether the change in contract has any impact to the Plan's members and would therefore require additional notification to its subscribers.

Subsequent to the examination date, the Plan notified the Department that it implemented procedures to notify its participating providers of any material change to existing contracts.

E. New York State United Teachers

The Plan maintains a relationship with New York State United Teachers (NYSUT), in which the Plan pays monies to NYSUT in return for its administration of certain dental contracts with various school districts. Under this agreement, the school groups pay a rate per eligible employee that is determined at the inception and renewal of the contract. A two percent administrative fee is also charged by NYSUT. At the end of a contract period, the Plan determines the experience on each contract. If the total of premiums received exceeds the total of claims paid, plus a fifteen percent administrative fee added to the calculated premium to compensate the Plan for its administration of the contracts, the excess amount is refunded to NYSUT (as additional administrative fees). If the claims incurred plus the administrative fee exceeds the premiums received, the Plan absorbs the excess amount of claims incurred.

As each policy year draws to a close, DDNY calculates new rates for the various school districts, utilizing the specific claims experience of each district. Once calculated, as noted above, DDNY adds its own fifteen percent administrative fee, and the two-percent NYSUT administration fee, which it calls a retention rate, to reflect its risk in the event the group's experience is higher than anticipated. As noted above, if the premiums received exceed the claims incurred plus the administrative fee, the excess amount is refunded to NYSUT.

The retention rate amounts to an improper subsidy between the insured groups and NYSUT, since it is not permitted under the approved experience-rated formula filed by the Plan. This is a violation of New York Insurance Law, Section 4308(b), which states in part the following:

> "No corporation subject to the provisions of this article shall enter into any contract unless and until it shall have filed with the superintendent a schedule of the premiums or, if appropriate, rating formula from which premiums are determined, to be paid under the contracts and shall have obtained the superintendent's approval thereof."

DDNY provides such final rates to NYSUT, which recommends adjustments to the calculated rates, increasing the rate in some districts and decreasing the rate in others. The net effect of the recommended changes is revenue neutral. The Plan maintains the changes are made in order to smooth out the increases or decreases in premium for the separate school districts. Since the contracts are directly between DDNY and the school districts, and not with the NYSUT, this is not permitted under the approved experience-rated formula and as such is also a violation of New York Insurance Law, Section 4308(b).

It is recommended that DDNY comply with the requirements of Section 4308(b) of the New York Insurance Law by eliminating the retention rate added to the rates charged to applicable school groups.

It is recommended that DDNY comply with the requirements of Section 4308(b) of the New York Insurance Law by refraining from implementing the NYSUT's recommended rate changes for certain school districts, which are not included within the Plan's experience rating formula approved by the Department.

Subsequent to the examination date, the Plan indicated to the Department that it had taken steps to comply with the above recommendation.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

There were twenty-seven (27) comments and recommendations from the prior report on examination as of December 31, 2002. The current status of these matters is as follows (page numbers refer to the prior report):

ITEM NO.		PAGE NO.
	Management and Controls	
1.	Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the insurer. It is essential that board members attend meetings consistently and set forth their views on relevant matters so that appropriate decisions may be reached by the board. Individuals who fail to attend at least one-half of the regular meetings do not fulfill such criteria. Board members who are unable or unwilling to attend meetings consistently should resign or be replaced.	5
	The Plan has complied with this recommendation.	
2.	It is recommended that the board comply with its by-laws and maintain the proper number of dentist to non-dentist directors.	5
	The Plan has complied with this recommendation.	
3.	It is recommended that the Plan rewrite its General Agency Agreement to reflect the responsibilities of all involved parties and submit that agreement to the Superintendent of Insurance for review.	7
	The Plan has complied with this recommendation.	
4.	It is recommended that the parties to the General Agency Agreement review the agreement to ensure all relevant clauses are being enforced as written.	7
	The Plan has complied with this recommendation.	

ITEM NO.		PAGE NO.
5.	It is recommended that the Plan submit its DeltaCare USA Administration Agreement (DAA) to the Superintendent of Insurance for review. *The Plan has complied with this recommendation.*	7
6.	It is recommended that the Plan report income generated from "leasing" its provider network to PaCa for NY residents who are enrolled through DeltaCare USA group contracts located outside of the State of New York as Risk Revenue in accordance with the NAIC Annual Statement Instructions. *The Plan has complied with this recommendation.*	8
7.	It is recommended that DDNY submit a revised Annual Statement for 2002 and revised Quarterly Statements for 2003 that correctly report all risk revenue in the Statement of Revenue and Expenses and exclude all such revenue from premium income. *The Plan has complied with this recommendation.*	8
8.	It is recommended that the Plan include language required by the Department within its reinsurance contracts or establish a penalty for unauthorized reinsurance as required by New York Insurance Law §1301(a)(14). It should be noted that unless the appropriate language is inserted into the agreements, the Plan must establish a liability for unauthorized reinsurance as described above. *The Plan has complied with this recommendation.*	11
9.	It is recommended that the custodial agreement be amended to include all of the covenants suggested by the Department. It is noted that, as of the examination date, that agreement had been amended to include all of the suggested covenants and was in the final stages of approval. *The Plan has complied with this recommendation.*	12

ITEM NO.		PAGE NO.
	Premiums Due and Unpaid	
10.	It is recommended that the Plan comply with SAP No. 61 and record its premium receivables net of reinsurance in its financial statement. *The Plan has complied with this recommendation.*	17
	Claims Processing	
11.	It is recommended that the Plan comply with New York Insurance Law §3234(b) and specifically explain on its EOBs why it has reduced procedures and payments from those claimed. *The Plan has complied with this recommendation.*	22
12.	It is recommended that the Plan audit its processing systems to ensure that amounts billed are properly entered into the claim system. *The Plan has complied with this recommendation.*	22
13.	It is recommended that the Plan fully explain its contractual exclusions to its members and to its participating providers. *The Plan has complied with this recommendation.*	22
	Prompt Pay Law	
14.	It is recommended that the Plan review all claims not paid within 45 days to determine whether any applicable interest is due and pay such interest. It is noted that, as of the examination date, the Plan has undertaken such a review. *The Plan has complied with this recommendation by undertaking such a review, determining interest due and paying the interest. Subsequently, it was determined that the Plan needed to modify the dates used in its interest rate calculation methodology. A recommendation similar to that effect is included within this report on examination.*	24

ITEM NO.		PAGE NO.
	Complaints/Grievances	
15.	It is recommended that the Plan comply with Part 216(4)(e) of New York Insurance Department Regulation 64 (11 NYCRR 216.4(e)) and maintain a log of all complaints and grievances received. It is noted that the Plan has agreed to comply with this recommendation. *The Plan has complied with this recommendation.*	25
	Policy Forms	
16.	It is recommended that the Plan comply with New York Insurance Law §4308(a) and issue only contracts that have been approved by the Superintendent of Insurance. *The Plan has complied with this recommendation.*	26
17.	It is recommended that the benefit lists attached to group contracts be rewritten to clarify the amount of reimbursement that will be made for palliative procedures. *The Plan has complied with this recommendation.*	26
	Rating	
18.	It is recommended that DDNY comply with New York Insurance Law §4308(b) and calculate rates utilizing only those factors noted in the filed rate formula. *The Plan has complied with this recommendation.*	27
	Contract Period – Non-Payment of Premium	
19.	It is recommended that, in the event the Plan elects not to terminate delinquent groups, even after the contractual grace period, the Plan accept the risk for such groups and process all claims within the time parameters required under New York Insurance Law 3224-a. *The Plan has complied with this recommendation.*	28

ITEM NO.		PAGE NO.
20.	It is recommended that the Plan take steps to actively enforce its grace period requirements. *The Plan has complied with this recommendation.*	28
	Participating Provider Agreement	
21.	It is recommended that the Plan ensure the methods by which it establishes participating provider reimbursement amounts comply with the agreements with such providers. *The Plan has taken steps to comply with this recommendation. A similar recommendation is included within this report on examination.*	29
	Explanation of Benefits Forms	
22.	It is recommended that the Plan comply with New York Insurance Law §3234(b)(7) and include all requisite language on its EOB forms. *The Plan has complied with this recommendation.*	29
	Record Retention	
23.	It is recommended that the Plan comply with Part 243.2(b)(4) of New York Regulation 152 (11 NYCRR 243.2(b)(4)) and maintain all claim records for six calendar years after all elements of the claim are resolved and the file is closed or until after the filing of the report on examination in which the claim file was subject to review, whichever is longer. *The Plan has complied with this recommendation.*	30
	Fraud Prevention	
24.	It is recommended that the Plan comply with New York Insurance Law §403(d) and place a fraud warning on all of its claim forms. *The Plan has complied with this recommendation.*	31

ITEM NO. PAGE NO.

New York State United Teachers

25. It is recommended that DDNY comply with New York Insurance Law §4308(b) and discontinue adding a retention rate to the rates charged to its school groups. 32

Although, the Plan has taken steps to comply with this recommendation. The Plan has not fully complied as of the examination date. A similar recommendation is included within this report on examination.

26. It is recommended that DDNY comply with New York Insurance Law §4308(b) and take steps to prevent NYSUT from recommending changes to the rates from those calculated using the rate formula. 32

Although, the Plan has taken steps to comply with this recommendation. The Plan has not fully complied with this recommendation as of the examination date. A similar recommendation is included within this report on examination.

Third Party Administration Agreements

27. It is recommended that the Plan implement a signed agreement outlining the administrative services that Wolfpack Insurance Services, Inc. is to provide on behalf of the Plan. 32

The Plan has complied with this recommendation.

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

ITEM		PAGE NO.
D.	Participating Provider Agreement	
	It is recommended that the Plan notify its participating providers of any change to their contract in a timely manner. Further, consideration should be given as to whether the change in contract has any impact to the Plan's members and would therefore require additional notification to its subscribers. Subsequent to the examination date, the Plan notified the Department that it implemented procedures to notify its participating providers of any material change to existing contracts.	23
E.	New York State United Teachers	
i.	It is recommended that DDNY comply with the requirements of §4308(b) of the New York Insurance Law by eliminating the retention rate added to the rates charged to applicable school groups.	25
ii.	It is recommended that DDNY comply with the requirements of Section 4308(b) of the New York Insurance Law by refraining from implementing the NYSUT's recommended rate changes for certain school districts, which are not included within the Plan's experience rating formula approved by the Department. Subsequent to the examination date, the Plan indicated to the Department that it had taken steps to comply with the above recommendation.	25

Appointment No. ***22651***

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, **Eric R. Dinallo** , Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Tommy Kong
as a proper person to examine into the affairs of the

Delta Dental of New York, Inc.

and to make a report to me in writing of the said

Company

with such information as she shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal of this Department, at the City of New York.

this 3rd day of August 2007

Eric R. Dinallo
Superintendent of Insurance