



In September 2020, the Washington State Dental Association (WSDA) and Washington Dental Service (Delta) announced a proposed settlement to *Bradshaw, et al v. Washington Dental Service* that was filed in January 2019. The settlement includes amendments to Delta’s Articles of Incorporation and Bylaws that must be approved by Delta’s member dentists at Delta’s annual meeting on Friday, November 13, 2020. The following table outlines some of the more significant issues raised by the plaintiffs and an explanation of how each issue is addressed in the proposed settlement.

Issue Raised by Plaintiffs in the Lawsuit Filed Against Delta Dental of Washington	How the Issue is Addressed in the Proposed Settlement
<p>Amending Delta’s Governance Documents: In the litigation, the plaintiffs alleged that Delta was inappropriately vetoing amendments overwhelmingly approved by the member dentists and amending its governance documents without the knowledge or approval of its member dentists.</p>	<p>In the settlement, both parties support a change to Delta’s Articles of Incorporation clarifying that the only way to amend Delta’s governance documents is as specified in its Bylaws. In addition, both parties support amendments to Delta’s Bylaws related to how Delta’s Bylaws can be amended (Article X). The proposed amendments to Article X specify sections of the Bylaws that require approval from the member dentists, Delta’s Board of Directors, and Delta’s Independent Directors on the Board in order to be amended. Furthermore, all parties can only fully approve or adopt proposed Bylaws amendments as written; partial vetoes of amendments are not permitted.</p> <p>The remaining sections of the Bylaws can be amended by either the Board or the member dentists, but disclosures of votes to amend the Bylaws must be made at least 30 days in advance.</p> <p>Article X amendments include a pathway for mediation if disputes between member dentists and Delta related to Article X occur in the future. This mediation language does not limit or preclude future legal action by member dentists but requires an attempt at mediation prior to legal action related to Article X.</p>
<p>Nominations and Elections of Member Dentists on Delta’s Board of Directors: A series of Bylaws amendments and Board of Directors vetoes in years past resulted in a nominations and elections process where the Governance and Nominating Committee (GNC) of Delta’s Board of Directors (a majority of whom are not dentists) selected which member dentists were nominated to run for the Board of Directors. Elections for these positions were uncontested and directors</p>	<p>Delta and WSDA propose that a Member Nominating Panel (MNP) be created to, in part, recommend nominees for member dentist positions on the Board of Directors. The MNP will have four members. Two of the members will be appointed in a process controlled by organized dentistry (WSDA). The remaining two members must be member dentists on Delta’s Board of Directors. MNP recommendations will require approval of at least three of the four MNP members, and all four MNP members must participate in all MNP discussions (Article III Section 2).</p> <p>Beginning in 2021, any new candidates for election to member dentist seats on Delta's Board of Directors must have been recommended by the MNP. The MNP will recommend a slate of at least</p>

<p>were elected without significant support from the member dentists. Member dentists overwhelmingly adopted Bylaws amendments related to nominations and elections for member dentists on the Board of Directors, but these amendments were vetoed.</p>	<p>two candidates for each open member dentist seat on the Board of Directors where there is no incumbent standing for re-election. MNP recommendations will be submitted to the Board’s Governance and Nominating Committee (GNC) and the full Board of Directors for their approval. If the GNC or the Board does not approve of the slate recommended by the MNP then the MNP will recommend additional candidates (Article III Section 2).</p> <p>The GNC and Board will determine how many candidates are put on the ballot for member dentist elections, whether there is or is not an incumbent standing for re-election. If multiple candidates are on the ballot, the plurality voting standard (candidate with the most votes wins even if the candidate with the most votes does not have a majority of the votes cast) will be used. If a single candidate is on the ballot, the majority voting standard (a candidate must receive a majority of the votes cast to win) will be used (Article II Section 4).</p> <p>If a single candidate fails to receive a majority of the votes cast, then that candidate will not be elected to the Board of Directors. In this instance, the MNP will generate recommendations to fill the vacancy created (Article IV Section 1.D).</p>
<p>Role of the Member Advisory Panel (MAP): For over a decade, Delta has used the MAP to discuss various dental benefits policy issues with a group of member dentists. The MAP was created to replace the Board of Trustees, which brought regional representation into Delta’s governance prior to 2008. Prior to the settlement, the scope and purpose of the MAP has been unclear to many member dentists, who have felt they have limited ability to raise concerns and seek remedies to dental benefit policies they believe are detrimental to patient care. Furthermore, many member dentists are unsure who serves on the MAP and know little about what occurs at MAP meetings. Language related to the MAP remained at the insurance subsidiary (Delta Dental of Washington) level after Delta’s 2013 reorganization into a holding company structure, but members generally were unaware there was no MAP at the holding company level.</p>	<p>The proposed Bylaws amendments articulate a clear scope of responsibility for the MAP within the Delta Bylaws. The MAP is now charged with promoting the exchange of ideas and concerns between member dentists and Delta as well as advising Delta’s Board of Directors on policies related to patient care, claims processing, and other topics of interest. The MAP is empowered to provide feedback and suggestions to the Board of Directors and the Board will provide responses. The MAP will also serve as a communications conduit to promote the exchange of information and ideas among Delta, WSDA, component dental societies and others in the dental community (Article III Section 1.A).</p> <p>Written summaries of MAP meetings will be shared with Delta members. These reforms provide clear two-way channels between member dentists and Delta leadership to discuss patient care concerns and other important matters (Article III Section 1.C.).</p> <p>The MAP will have at least 10 members and no more than 18 members. Three of these members will be member dentists on the Board of Directors. The remaining members will be at large member dentists (Article III Section 1).</p> <p>The MAP shall meet at least three times per year (Article III Section 1.C).</p>

<p>Nominations and Appointments of MAP Members; Selection of MAP Leadership: For many years, MAP appointments and the MAP nomination process were not transparent to the membership.</p>	<p>Each year, the Member Nominating Panel (MNP) shall develop a slate of candidates to fill MAP vacancies. The MNP shall submit this slate to the MAP for review and approval. Once approved by the MAP, the slate of candidates will be sent to the Board of Directors for its approval. If either the Board or MAP do not support enough of the MNP-recommended slate to fill all of the vacancies, the MNP will provide additional recommendations (Article III Section 2.B.1).</p> <p>The MAP will be overseen by a MAP Chair and MAP Vice Chair. The Chair will work with the Board Chair and CEO to develop the MAP agenda, after considering input received from MAP members. Generally, the Vice Chair will become Chair. The MAP will recommend two candidates to serve as Vice Chair. The MAP Vice Chair shall be selected by the incumbent MAP Chair, Delta Board Chair, and CEO (Article III Section 1.B).</p> <p>The MAP Chair will rotate between a WDS Member Director and an at-large MAP member at least every other two-year term.</p>
<p>Term Limits for Member Dentists on the Board of Directors: The plaintiffs raised concerns with the length of time that member dentists can serve on the Board of Directors. Currently, member dentists can serve up to three consecutive three-year terms, plus an additional term of up to three years if the Board determines it is necessary to ensure continuity on the Board of Directors. The member dentists amended the Bylaws to limit member dentist directors to two, three-year terms. This amendment was vetoed.</p>	<p>After considerable discussion, the settlement compromises to limit member dentists to serve up to three, three-year terms total. A member director may be nominated and elected to serve an additional one-year term only under exceptional circumstances (Article IV Section 1.B.3.c). Each time an incumbent is eligible to run for another term, that incumbent must receive a majority of the votes cast if the race is uncontested (Article II Section 4).</p> <p>A major reason the plaintiffs agreed to settle on three terms was out of concern that member dentist directors would be less likely to serve in leadership positions on the Board of Directors if member dentists had shorter term limits than Independent Directors. Going forward, a member dentist must serve as Board Chair at least two years out of each rolling six-year period (Article V Section 2). Additionally, a member dentist will serve as the Chair of the Governance and Nominating Committee at least every third chairperson term (Article V Section 2).</p>
<p>Delta President and CEO as a Voting Member of the Board of Directors: The member dentists amended the Bylaws to remove the President and CEO as a voting member of the Board of Directors. This amendment was vetoed.</p>	<p>After considerable discussion, the plaintiffs decided not to pursue this change as a part of the settlement. It is very common for CEOs at companies the size of Delta to also be voting members of the Board. Additional language was added to the Bylaws to prohibit the President and CEO from serving as an officer or as a voting member on any of the standing committees of the Board of Directors.</p>