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FOR IMMEDIATE RELEASE
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AT
(202) 616-2771
TDD (202) 514-1888

DEPARTMENT OF JUSTICE AND ARIZONA STATE ATTORNEY GENERAL
BREAK UP DENTAL GROUP'S CONSPIRACY TO ELIMINATE DISCOUNTING

WASHINGTON, D.C. -- The Department of Justice and the Arizona Attorney General's office acted jointly today to stop a statewide agreement that made it almost impossible for many dentists in Arizona to cut their prices or offer discounts on dental services.

Similar agreements are common in the health care industry, and those that stifle price competition are likely to be challenged elsewhere, the Justice Department warned today.

In a civil antitrust suit and proposed settlement filed in Phoenix, the dentist-controlled Delta Dental Plan of Arizona Inc. was accused of eliminating discounts and reducing price competition under an agreement that had the effect of preventing dentists from cutting fees below those offered in the Delta Plan. This is the first action challenging such contract provisions, which are known in the industry as "most favored nation" clauses. Approximately 85% of the dentists in Arizona have affiliated with Delta, the dominant dental plan in the state, the Department said.

The Department stated that, prior to Delta's enforcement of the "most favored nation" clause, many dentists in Arizona provided discounts of 25-40% off their fees according to Delta's own documents. The Department estimated that discount dental plans potentially could save Arizona residents millions of dollars a year in health care costs.

"This is a case of nationwide importance because it involves a contract provision that is widely used in the health care industry," said Anne K. Bingaman, Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "The use of the most favored nation clause by Delta facilitated anticompetitive behavior by reducing or eliminating discounts and limiting competition," she added.

The joint charges were filed against Delta for its part in eliminating dental fee discounts by many Delta dentists and in deterring entry from competing dental insurance plans. Delta, headquartered in Phoenix, carried out the conspiracy through agreements with dentists that contained most favored nation clauses. Because so many Arizona dentists participate in the Delta plan, and because Delta patients account for a significant part of these dentists' income, the most favored nations clauses have led many dentists to stop discounting and severely restricted competing dental plans' ability to attract and retain enough dentists to serve their members, the Department said.

Hundreds of dentists who had signed up with discount dental plans that were trying to compete with Delta were forced to resign from those plans because of the most favored nation clause, the Department said.

Bingaman said, "This Administration is committed to making health care available and affordable to all Americans. The

Department of Justice will do its part to ensure that illegal price fixing conspiracies and anticompetitive most favored nation clauses that get in the way of achieving this goal, will be prosecuted," Bingaman added.

At the same time, a proposed consent decree was filed that, if approved by the court, would eliminate the most favored nation clause and prevent Delta from engaging in other actions that would limit future discounting by Arizona dentists. The complaint and proposed consent decree were filed in U.S. District Court in Phoenix.

"This joint effort by the Department of Justice and the Arizona State Attorney General's office is an example of how coordinated law enforcement can crack down on anticompetitive practices that drive up the cost of health care to consumers," Bingaman said.

"Consumers will have access to a wider choice of dental insurance alternatives, including discount dental plans and other managed care options, and will receive the benefits of cost savings achieved by those plans, as a result of this settlement. The consent decree will restore to consumers the benefits of free and open competition," Bingaman added.

The consent decree prohibits Delta from:

Maintaining, adopting or enforcing a most favored nation provision in its agreements with dentists.

Demanding information from dentists about their participation with other dental plans or individuals.

Examining or monitoring the fees charged by a dentist to any other dental plan or individual.

Sending written notices to dentists regarding fees charged to other dental plans or individual patients.

Requiring any dentist to identify the dental plans with which the dentist participates.

Retaliating against any dentist who offers discounts to other dental plans or individual patients.

Taking any action to coerce a dentist to refrain from offering discount fees.

The proposed consent decree, if approved by the court, would be in effect for five years.

As required by the Tunney Act, the proposed consent decree will be published in the Federal Register, along with the Department's competitive impact statement. Any person may submit written comments concerning the proposed decree during a 60-day comment period to Gary Spratling, Chief, San Francisco Field Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Room 10-0101, Box 36046, San Francisco, California 94102 (415-556-6300).

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