

# Riddell Williams

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BARBARA ALLAN SHICKICH  
206.389.1680  
bshickich@riddellwilliams.com

2013 MAY -6 A 9:38  
T 206.624.3600  
F 206.389.1708

1001 Fourth Avenue, Suite 4500  
Seattle, Washington 98154-1192

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May 2, 2013

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

MAY 03 2013

VIA FEDEX

OIC - LEGAL AFFAIRS

The Honorable Patricia D. Petersen  
Presiding Officer  
Chief Hearing Officer  
Office of the Insurance Commissioner  
5000 Capitol Boulevard  
Tumwater, WA 98501

Ronald Pastuch  
Holding Company Manager, Company  
Supervision  
Office of the Insurance Commissioner  
5000 Capitol Boulevard  
Tumwater, WA 98501

Robin Aronson  
Staff Attorney  
Office of the Insurance Commissioner  
5000 Capitol Boulevard  
Tumwater, WA 98501

**Re: No. 13-0115**  
**In the Matter of the Proposed Plan of Reorganization and Merger for Washington**  
**Dental Service**

Dear Judge Petersen, Mr. Pastuch, and Ms. Aronson:

Enclosed please find the following documents which are submitted on behalf of Washington Dental Service in the matter noted above.

- Pre-filled Opening Statement of Barbara Allan Shickich
- Pre-filed Testimony of Bradley A. Berg
- Pre-filed Closing Argument of Barbara Allan Shickich

If you have any questions, please let me know.

Sincerely,



Barbara Allan Shickich  
of  
RIDDELL WILLIAMS P.S.

BAS/mko  
Enclosures

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## Opening Statement

Your honor, my name is Barbara Shickich. I am an attorney admitted to practice in the State of Washington. I represent Washington Dental Service ("WDS"), a domestic health care service contractor with a valid certificate of registration under Chapter 48.44 RCW. WDS is a Washington nonprofit corporation, exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code.

WDS seeks approval of the merger of WDS Merger Sub with and into WDS in accordance with the Articles of Merger and the Plan of Merger filed with the Office of Insurance Commissioner ("OIC") to enable WDS to complete its planned reorganization into a more traditional holding company structure. Brad Berg, Chief Operating and Financial Officer of WDS will provide more specific details about the proposed merger under review. I will briefly explain the background of the proposed merger and how the evidence and testimony collectively demonstrate the applicable statutory review criteria under RCW 48.31.010 are satisfied.

Since it was founded, WDS's articles of incorporation have identified dual missions: providing dental benefits coverage to individuals and groups, and their families, and encouraging, fostering and financing education, and research in dentistry and oral health. The purpose of the reorganization is to put WDS in a position to more effectively pursue both its core dental benefits coverage business and its broader oral health public benefit mission. For example, developing information regarding cost-effective, efficient delivery of dental services, including evidence-based dental care, as well as analyzing the relationship between dental health and overall health, are strategies that can help sustain and build WDS's dental coverage business. The vitality and growth of WDS's dental coverage business is important to its current subscribers, and to the public as a whole, both in terms of reducing dental coverage costs and increasing the efficiency and effectiveness of the delivery of dental care. Flexibility in pursuing these strategies can best be achieved through a holding company structure in which the ultimate controlling corporation is not directly subject to the regulatory constraints on investments applicable to a health care service contractor.

The proposed ultimate controlling corporation for WDS is DD of Washington. DD of Washington is also a Washington nonprofit corporation, exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code. The governance of DD of Washington will be identical to WDS's current governance—it will have the same members and the same process for electing its board of directors as WDS now has. DD of Washington is organized exclusively for the promotion of social welfare consistent with its tax-exempt status under 501(c)(4)—the same tax-exempt status granted to WDS.

DD of Washington is the sole member of WDS Merger Sub, a Washington nonprofit corporation formed solely for the purpose of facilitating the establishment of DD of Washington as the holding company of WDS. The merger of WDS and WDS Merger Sub will result in DD of Washington becoming the sole member of WDS, and in the current members of WDS becoming the members of DD of Washington.

The evidence in this matter includes the documents filed with the OIC on March 14, 2013, including the Plan of Reorganization with Exhibits A-K, and the supplemental information provided to the OIC on March 28, 2013 which includes the Certificates of Resolutions for WDS and WDS Merger Sub. Today you will hear testimony from Mr. Berg and Mr. Pastuch supporting the proposed merger.

The Reorganization Plan submitted by WDS to the OIC fully described the proposed merger of WDS and WDS Merger Sub and included the Articles of Merger and Plan of Merger. The Company Supervision Division of the OIC reviewed the Reorganization Plan and all of the documents related to the merger of WDS and WDS Merger Sub submitted by WDS and requested a hearing be held according to RCW 48.31.010.

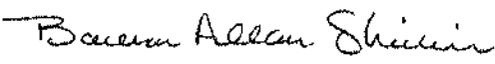
The evidence presented through testimony and written documentation will show the proposed merger meets the four criteria set forth in RCW 48.31.010 as follows:

- The Articles of Merger and Plan of Merger have been submitted to the OIC in advance of the merger as required by RCW 48.31.010(1)(a); the purpose of this hearing is to obtain OIC approval of the merger.
- The merger is fair, equitable, consistent with law and no reasonable objection to the merger exists as required by RCW 48.31.010(1)(b).
- No director, officer, member, or subscriber of WDS will receive any fee, commission, other compensation or valuable consideration whatsoever, for in any manner aiding, promoting or assisting in the merger, as required by RCW 48.31.010(1)(c).
- The merger is otherwise governed by the general laws of Washington related to business corporations (in this case nonprofit corporations) in that: it follows the procedure specified in RCW 24.03.185 for the merger of two corporations incorporated under RCW 24.03; the Articles of Merger and Plan of Merger have been adopted and approved in accordance with the requirements of RCW 24.03.195; and the Articles of Merger comply with the requirements of RCW 24.03.200(1). If the merger is approved and the rest of the reorganization can be effectively implemented, the Articles of Merger will be filed as required by RCW 24.03.200(2) and the merger will be effective in accordance with RCW 24.03.205.

We are prepared to offer testimony in support of the proposed merger and to answer any questions related to the proposed merger.

Dated this 2nd day of May, 2013.

RIDDELL WILLIAMS P.S.

By 

Barbara Allan Shickich, WSBA 8733  
Attorney for Washington Dental Service



Testimony of Bradley A. Berg

Q. Mr. Berg, would you please state your name, state of residence and your principal occupation, for the record?

A. My name is Bradley A. Berg. I am a resident of Sammamish, Washington, and am the Chief Operating and Financial Officer of Washington Dental Service ("WDS").

Q. Would you please provide a brief summary of your background and career?

A. I am a licensed CPA with a bachelor's degree in accounting from the University of Northern Iowa. I have completed the corporate financial management program at Harvard Business School and the Program on Negotiation for senior executives at Harvard Law School. I joined WDS in March 2012. Prior to joining WDS, I spent three years as a principal at Badr Martin, P.S., a leading Seattle-based CPA and business advisory firm. I began my career at Coopers & Lybrand, what is now PricewaterhouseCoopers, where I spent 10 years and was an audit partner. I have over 30 years of experience with both large and small private and public companies.

Q. Would you please describe WDS?

A. WDS is a Washington nonprofit corporation organized in 1954 to secure dental services for individuals, families, and groups, and to encourage, foster and finance research and other activities in support of dental services. It holds a certificate of registration from the State of Washington Insurance Commissioner as a health care service contractor issued in 1955. WDS provides a full range of dental plans, including traditional fee-for-service, preferred provider (PPO), and managed care dental plans. WDS is domiciled in Washington, with a home office at 9706 4th Avenue N.E., Seattle, WA 98115.

WDS is a member of the Delta Dental Plan Association and is exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code.

Q. Please describe the structure of WDS.

A. WDS is organized as nonprofit corporation under Chapter 24.03 RCW. Any dentist licensed by the State of Washington to practice dentistry, who is actively practicing dentistry and who executes a service contract with WDS is eligible to become a member of WDS. WDS is governed by a board of directors comprised of Member Directors, Independent Directors, and an Ex Officio Director (the President and CEO).

WDS has a number of affiliated companies. WDS is the sole member of: Washington Dental Service Foundation LLC, a single member limited liability company whose mission is to prevent oral disease and improve overall health by working to develop and implement innovative programs and public policies that produce permanent changes in the healthcare arena and improve the public's long-term oral health; Institute for Oral Health, LLC, an educational organization whose mission is to advance oral health care by identifying effective and cost-

efficient guidelines for treatment, access, and delivery and to promote best practices by serving as a central resource for shared knowledge and collaboration to benefit the dental profession, the dental industry and the public they serve; and WDS Holdings LLC, a single member limited liability company whose purpose is to invest in oral health related enterprises that will promote oral and overall health of the public.

WDS Holdings LLC has a 20% equity interest in Hcathentic, Inc., formerly known as Dental-Medical Analytics Corporation, which provides intelligent information products to employers, brokers and carriers with the goal of reducing healthcare costs and improving the lives of employees and members.

WDS is a 25% owner of Encara Corporation which it owns jointly with three other Delta Dental Plans. Encara provides marketing, data analytics, administrative and other services to WDS and its other owners in support of individual dental insurance products.

Also affiliated with WDS is Washington Dental Service Fund, a 501(c)(3) tax-exempt, charitable organization whose primary purpose is to promote social welfare, including promoting the oral health of the public, and sponsoring and innovating for the advancement of oral health.

Q. What is WDS Merger Sub?

A. WDS Merger Sub is a Washington nonprofit corporation formed in 2009 under Chapter 24.03 RCW. Its sole member is DD of Washington, also a Washington nonprofit corporation, which is the proposed holding company for WDS. The sole purpose of WDS Merger Sub is to facilitate the establishment of DD of Washington as the holding company of WDS through the merger of WDS and WDS Merger Sub.

Q. What is your role with WDS Merger Sub?

A. I am the Secretary of WDS Merger Sub.

Q. Please describe DD of Washington.

A. DD of Washington is a Washington nonprofit corporation formed in 2009 under Chapter 24.03 RCW. It holds an affiliate license from Delta Dental Plans Association and is exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code. Through the proposed merger DD of Washington will become the ultimate controlling corporation for WDS and its affiliates.

The primary purposes of DD of Washington as set forth in its articles of incorporation are:

1. To serve as a holding company of WDS, an existing Washington nonprofit corporation recognized as tax-exempt under Section 501(c)(4) of the Internal Revenue Code, which provides prepaid dental services to its subscribers;

2. To serve as a holding company for other affiliated entities that provide services and engage in businesses that are supportive of WDS's mission of advancing the public's oral health by providing quality dental benefits at an affordable cost;
3. Guiding, monitoring and coordinating the activities of WDS and the other affiliated entities to achieve the tax-exempt health care purposes of WDS in an efficient and integrated manner; and
4. Encouraging, fostering and financing professional and scientific study and research in the general field of dentistry and oral health, conducting studies and investigations designed to develop information pertaining to all aspects of dental services coverage and payment plans and assisting in the education of the public concerning the need for and advantage of adequate dental treatment and oral health.

Q. Please describe the purpose for reorganizing WDS's holding company system.

A. The purpose of the merger, and the resulting reorganization of WDS's holding company system, is to better enable WDS and DD of Washington, the new holding company, to sustain and enhance WDS's core business of providing dental benefits coverage and to fulfill its broader public benefit mission of improving oral health. While these two corporate purposes are complementary—innovations in oral health can lead to reduced costs for dental coverage benefits—the means to accomplish each requires different business models. It has been challenging at times for WDS to pursue oral health investment opportunities given the constraints on the amounts and categories of subsidiary investments permitted under the Insurance Code and requiring OIC review and/or approval. Yet, engaging in such oral health public benefit activities are important for WDS to retain its tax-exempt status.

We believe that by reorganizing into the well-established and traditional holding company structure used by many companies to segregate their corporate activities, WDS will be able to preserve the sanctity of WDS's core business with continuing management attention and substantial reserves, but also assure WDS the ability to fulfill its public benefit purpose and be in a better position to retain its tax exempt status. This structure was developed in conjunction with 2009 conversations with the OIC with the intent of enabling WDS to better pursue its broader social mission and work more efficiently with the OIC on subsidiary investments.

Q. Please describe the regulatory and legal steps that have been taken regarding the proposed merger.

A. On June 17, 2009, WDS filed a proposed reorganization with the Office of Insurance Commissioner describing the various steps necessary for the creation of a new nonprofit, tax-exempt holding company which would become the sole member of WDS. On July 7, 2009, the OIC issued Order No. 09-0089 Granting Exemption to RCW 48.31C.030, which ordered that the proposed transaction in which WDS is reorganizing its holding company structure is exempt from the requirements of RCW 48.31C.030. The OIC also issued a solicitation permit for the initial financing of DD of Washington as a domestic health carrier holding corporation.

(Amended Permit No.369). Articles of incorporation were filed for DD of Washington and WDS Merger Sub.

In October 2009, DD of Washington obtained an affiliate license from Delta Dental Plans Association and filed an application with the Internal Revenue Service for tax exempt status under Section 501(c)(4) of the Internal Revenue Code. On December 21, 2012 the Internal Revenue Service issued its determination granting DD of Washington tax exempt status under Section 501(c)(4).

After finally receiving the determination of tax-exempt status for DD of Washington, we met with Jim Odiorne, Ron Pastuch, and other OIC staff to discuss the next steps in the reorganization, and the various regulatory filings and approvals that would be required to implement the reorganization. We were advised that a hearing would be required under RCW 48.31.010 for approval of the merger of WDS and WDS Merger Sub.

On February 8, 2013, the boards of directors of WDS, WDS Merger Sub, and DD of Washington met and discussed the proposed merger of WDS and WDS Merger Sub and the plan to proceed with the reorganization of WDS. After full consideration, the board of directors of WDS approved the Articles of Merger and the Plan of Merger, and authorized the corporate officers to obtain necessary regulatory approvals to effectively implement the reorganization, including the merger between WDS and WDS Merger Sub. The board of directors of WDS Merger Sub approved the Articles of Merger and the Plan of Merger and their execution after the corporate officers determine the reorganization can be effectively implemented, including obtaining any regulatory approvals.

On March 14, 2013, WDS filed an application for its plan of reorganization and merger transaction with the Office of Insurance Commissioner requesting approval of the merger and the related transactions necessary to effectively implement the reorganization.

Q. What effect will the proposed merger have on the structure of WDS?

A. The proposed merger is a "reverse" merger, meaning WDS will be the surviving corporation. WDS Merger Sub will cease to exist. The articles and bylaws of WDS Merger Sub will become the articles and bylaws of WDS, the surviving corporation. DD of Washington, the new holding company, will become the sole member of WDS and all individuals who are members in good standing of WDS on the effective date of the merger will become members of DD of Washington. Members of DD of Washington will have all of the same membership rights with respect to DD of Washington as they currently have with respect to WDS. In this manner, the current members of WDS will maintain the same position they currently have with respect to the control of WDS and its affiliates.

The directors and officers of WDS immediately prior to the effective date of the merger will continue to be the directors and officers of the surviving corporation. The current board of directors of WDS is the initial board of directors of DD of Washington. The process for electing future members of the board of directors of DD of Washington is the same as the current process

for electing the board of directors of WDS.

WDS, the surviving corporation will retain all of the rights, assets, liabilities, and obligations it had prior to the merger. All existing dental benefits coverage agreements and all of the participating provider agreements with dentists will remain with the surviving corporation. The surviving corporation will remain registered as a health care service contractor.

Q. Will there be name changes?

A. As a part of the merger, WDS, the surviving corporation, will change its name from WDS to "Delta Dental of Washington." Following both the merger, and DD of Washington becoming the sole member of Delta Dental of Washington, formerly known as WDS, DD of Washington's articles of incorporation will be amended to change its name to Washington Dental Service.

Q. Please describe WDS's current financial position.

A. The annual statement on file with the Washington Office of Insurance Commissioner for the year ended December 31, 2012 identifies WDS as having assets of \$232,952,670, liabilities of \$48,285,395, and capital and surplus of \$184,667,275.

Q. How would you describe the financial impact of the proposed merger on WDS?

A. The proposed merger itself will have no financial impact on WDS. Subsequent to the merger and as a part of the reorganization, Delta Dental of Washington proposes to make an extraordinary distribution of WDS Holdings LLC, Washington Dental Service Foundation LLC, and the Institute for Oral Health LLC to DD of Washington. The anticipated value of that distribution is slightly over twenty-four million dollars based on the current net book value of each of these companies. This distribution will have no adverse financial impact on WDS. The admitted assets included in the distribution are less than 10% of capital and surplus. We have been advised by Mr. Pastuch that the notice of distribution, which was filed with the OIC on March 14, 2013, will be reviewed by the Holding Company Division following this hearing if the proposed merger is approved.

Q. Do you believe the proposed merger to be fair, equitable, and consistent with applicable law?

A. Yes, I do. The merger is fair and equitable to WDS policy holders, participating providers, member dentists, and the general public. The merger will not change any existing dental benefits coverage agreements or any participating provider agreements. All of those agreements will remain in full force and effect with the surviving corporation. Current members of WDS will have all of the same membership rights with respect to DD of Washington as they currently have with respect to WDS.

The proposed merger is consistent with, and meets the requirements of applicable law. The proposed merger has been filed in advance with the OIC as required. If approved by the OIC,

the merger will be effected in accordance with the Washington laws applicable to the merger of two nonprofit corporations incorporated under Chapter 24.03 RCW, RCW 24.03.185 and RCW 24.03.195 through RCW 24.03.205. The merger has been duly reviewed, authorized and approved by all necessary corporate procedures.

Q. Has WDS or any of its affiliates or representatives received any objections from policy holders, member dentists or members of the public with respect to the proposed merger?

A. Not to my knowledge. The OIC first made information regarding the proposed reorganization and merger available to the public in 2009 with the publication of Order No. 09-0089 Granting Exemption to RCW 48.31C.030 and Solicitation Permit (amended Permit No. 369). More recently, the notice of the proposed reorganization and merger was posted on the OIC website on March 26, 2013, public notice of the hearing was posted on the OIC website on April 25, 2013, and the formal Notice of Hearing was filed on April 29, 2013. As of the date of this pre-filed testimony, I am not aware of WDS or any of its affiliates or any representatives of WDS receiving any objection from any policyholders, member dentists or the general public about the proposed merger or the reorganization.

Q. Will any director, officer, member, or subscriber of WDS, or any other person receive any fee, commission or other compensation, or other valuable consideration whatsoever, except as expressly provided by the plan of merger, for in any manner aiding, promoting or assisting in the proposed merger?

A. No. No director, officer, member, or subscriber of WDS, will receive any valuable consideration for in any manner aiding, promoting or assisting in the proposed merger. Directors and officers will continue to receive reasonable compensation for the services they provide to WDS, in accordance with state and federal law. Members, who are also participating providers, will continue to receive reimbursements for the services they provide to WDS subscribers. Subscribers will continue to receive the benefits of their coverage agreements with WDS. However, none of the ongoing compensation or consideration is in any way related to the merger.

The only individuals who will be compensated for assisting with the proposed merger are our attorneys who will be compensated at their normal hourly rates for the legal services they provide in connection with the merger.

Q. Will the proposed merger of WDS and WDS Merger Sub, in all other respects be governed by and will the parties fully comply with, the general laws of Washington relating to nonprofit corporations, since WDS and WDS Merger Sub are both nonprofit corporations?

A. Yes.

The above testimony is true and correct to the best of my knowledge, information and belief and is given subject to the laws of perjury in the State of Washington.

Dated this 2<sup>nd</sup> day of May, 2013.



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Bradley Alan Berg  
Chief Operating and Financial Officer  
Washington Dental Service

**FILED**

2013 MAY -6 A 9 38

**BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER**

Hearings Unit, DIC  
Point of Contact  
Chief Deputy Officer

**In the Matter of the Proposed Plan of** )  
**Reorganization and Merger for:** )  
 )  
**WASHINGTON DENTAL SERVICE,** )  
**a Washington Health Care Service** )  
**Contractor** )  
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**No. 13-0115**

**PRE-FILED CLOSING  
ARGUMENT**

**PRE-FILED CLOSING ARGUMENT OF  
BARBARA ALLAN SHICKICH  
ATTORNEY FOR WASHINGTON DENTAL SERVICE**

**May 1, 2013**

## Closing Argument

Your honor, thank you for the opportunity to present evidence and testimony in connection with your consideration of the proposed merger of WDS Merger Sub with and into Washington Dental Service. The purpose of the merger is to facilitate the reorganization of WDS's holding company structure into a traditional holding company structure that will enable WDS to sustain and grow its dental benefits coverage business and at the same time ensure its broader oral health public benefit mission can be effectively and efficiently pursued.

The statutory criteria under which the proposed merger is being reviewed are set forth in RCW 48.31.010. The evidence presented supports the conclusion that the criteria are satisfied and the proposed merger should be approved.

The evidence shows the Articles of Merger and Plan of Merger were filed with the Office of Insurance Commissioner in advance of the merger as required by RCW 48.31.010(1)(a).

The evidence presented supports the conclusion that, as required by RCW 48.31.010(1)(b), the proposed merger is fair, equitable, consistent with law, and there is no reasonable objection to approving the merger.

The evidence presented supports the conclusion that no director, officer, member, or subscriber of WDS will receive any fee, commission, other compensation or valuable consideration whatsoever, for in any manner aiding, promoting or assisting in the merger, as required by RCW 48.31.010(c).

The evidence presented supports the conclusion that, as required by RCW 48.31.010(d), the merger complies with the applicable general laws of Washington related to business corporations which in this case we have interpreted to mean nonprofit corporations since both WDS and WDS Merger Sub are nonprofit corporations under chapter 24.03 RCW.

Mr. Berg's testimony addressed each of the four criteria just described. He gave credible and informed testimony supporting the conclusion that each of those criteria has been met. Similarly, Mr. Pastuch gave credible and informed testimony that the proposed merger meets the statutory requirements. Mr. Pastuch also testified WDS submitted all necessary documents to the OIC in connection with the proposed merger according to RCW 48.31.010, and the OIC recommends approval of the merger to the Chief Hearing Officer.

Accordingly, WDS respectfully requests entry of an order approving the merger pursuant to RCW 48.31.010.

On behalf of WDS, I would like to extend our appreciation to Mr. Pastuch, Ms. Aronson and individuals within the Company Supervision Department of the Office of Insurance Commissioner for their patience, diligence and courtesy in reviewing the proposed reorganization, including the proposed merger.

Thank you for your consideration.

Dated this 1st day of May, 2013.

RIDDELL WILLIAMS P.S.

By Barbara Allan Shickich  
Barbara Allan Shickich, WSBA 8733  
Attorney for Washington Dental Service