



FILED

2013 AUG 26 A 11: 26

**OFFICE OF
INSURANCE COMMISSIONER**

<p><i>In the matter of :</i></p> <p>COORDINATED CARE CORPORATION,</p> <p>a licensed Health Maintenance Organization</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 13-0232 <small>Hearings Unit, DIC</small></p> <p>OIC'S MOTION <small>Patrick D. Peterson</small> IN LIMINE <small>Hearing Officer</small></p> <p>TO EXCLUDE ALL EVIDENCE</p> <p>OF POTENTIAL CURE FOR</p> <p>FILING DEFECTS</p>
---	--	---

FACTS AND INTRODUCTION

Coordinated Care Corporation ("Coordinated Care" or "the Company") has filed forms, rates, network and binder for its proposed Washington Health Benefit Exchange individual market products. At the hearing on this matter, OIC will show that these filings violate both Washington law and the federal Affordable Care Act ("ACA") in numerous ways. Its filings were therefore closed and disapproved by the OIC on July 31, 2013. Coordinated Care has requested that the Hearing Officer reverse that decision and order OIC to approve the filings.

Coordinated Care requests "regulatory certification from the OIC to be presented to the Washington State Health Benefits Exchange as a qualified health plan for 2014." Coordinated Care's Amended Request for Hearing (hereinafter "Request for Hearing") at pg. 6. OIC believes that this relief is not available to Coordinated Care for several reasons. However, Coordinated care does correctly limit its challenge to "the Office of Insurance Commissioner's disapproval of Coordinated Care's Bronze, Silver and Gold Individual Plan Filings for 2014." Request for Hearing, at pg. 1.

OIC believes that Coordinated Care may seek to argue that it can now correct the defects in its filings that required OIC disapproval. OIC moves to exclude any such evidence on the basis that any argument by Coordinated Care that "we can fix all this" is irrelevant. That ship has sailed. The agency action at issue is OIC disapproval on July 31, 2013 of the plans that had been filed by Coordinated Care prior to that date. The only issue for hearing is whether OIC made an error of law or abuse of discretion in disapproving those plans on that day. Therefore, the only relevant

information is the contents of those filings *as they stood on that day*.

OIC respectfully requests that the Hearing Officer grant its Motion in Limine and prohibit any argument or evidence attempting to claim that Coordinated Care can correct the defects in its filings.

This should include, but not be limited to, barring any testimony, argument, or evidence regarding any potential changes to Coordinated Care's:

- rates, forms, provider network, or binder as set forth in filings submitted to OIC on or before July 31, 2013;
- existing provider contracts, or filings of new ones;
- policy language; or
- business practices.

ARGUMENT AND AUTHORITY

The only basis for any company's right to hearing is to challenge an "act, threatened act, or failure of the commissioner to act. ... or by any report, promulgation, or order of the commissioner" other than an order following a duly-noticed hearing. RCW 48.04.010.

The act which entitles Coordinated Care to this hearing was OIC's July 31, 2013 disapproval of Coordinated Care's Exchange products. The only issue for this hearing is whether that act constituted an error of law or abuse of discretion.

Consequently, any evidence of potential changes that could be made after that date is irrelevant. Any "we can fix all this" argument is like the Company's argument that it has adequate networks because it *intends* to contract with certain providers and it *intends* to spot contract for the rest. OIC cannot approve intentions. The Company is required to file its forms, and OIC is authorized to disapprove those filings if they are misleading or violate Washington law, among other reasons. RCW 48.46.060. OIC can – and must – approve only what is before it to review. The issue for this hearing is whether what was before it to review on July 31 was correctly disapproved.

It is not a defense to this motion to argue that Coordinated Care requests the relief of being allowed to submit corrected filings now. OIC does not believe such relief is available, and even if it was, a grant of such relief necessarily requires a finding that the filings were defective. Put another way: if Coordinated Care is entitled to relief, it is because OIC abused its discretion or made an error of law in disapproving the filings *as they existed on July 31, 2013*. To submit evidence of potential corrections is to admit that there were defects that required disapproval.

Either the filings contained violations of the law, or they did not. If they did, OIC did not commit any error that would entitle Coordinated Care to relief. If they did not, then Coordinated Care has no need of such relief. Either way, evidence of potential corrections is irrelevant.

CONCLUSION

Coordinated Care's sole basis for standing in this hearing is provided under RCW 48.04.020: an act, threatened act, or failure to act by OIC. The act at issue is disapproval of Coordinated Care's Exchange filings. Those filings were either compliant with state and federal law on July 31, 2013, when OIC acted, or they were not. That – and only that – is the issue for this hearing. Either way – there were violations or there were no violations – evidence of potential corrections is irrelevant. OIC respectfully requests that the Hearing Officer bar any evidence of potential corrections to Coordinated Care's filings after July 31, 2013.

Respectfully submitted this 26th day of August, 2013.



Andrea L. Philhower

OIC Staff Attorney