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OFFICE OF  
INSURANCE COMMISSIONER  
HEARINGS UNIT

2013 AUG 29 A 9 37

Fax: (360) 664-2782

Hearings Unit, DIC  
Patricia D. Petersen  
~~Kelly C. Garza~~  
Paralegal  
(360) 725-7002  
KellyC@oic.wa.gov

Patricia D. Petersen  
Chief Presiding Officer  
(360) 725-7105

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of	)	<b>Docket No. 13-0240</b>
	)	
<b>KAISER FOUNDATION HEALTH</b>	)	<b>ORDER GRANTING JOINT</b>
<b>PLAN OF THE NORTHWEST,</b>	)	<b>MOTION FOR CONTINUANCE</b>
	)	
A Health Care Service Contractor.	)	
_____	)	

**TO:** Kaiser Foundation Health Plan of the Northwest  
500 NE Multnomah Street, Suite 100  
Portland, OR 97232-5398

Maren Norton, Esq.  
Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101-4109

Barbara Nay, Esq.  
Stoel Rives LLP  
900 SW Fifth Ave., Suite 2600  
Portland, OR 97204-1268

**COPY TO:** Mike Kreidler, Insurance Commissioner  
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner  
Molly Nollette, Deputy Commissioner, Rates and Forms Division  
AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

On August 1, 2013, the Insurance Commissioner ("OIC") issued a Letter of Disapproval, disapproving the binder, form and rate filings ("KPIF Binder") of Kaiser Foundation Health Plan of the Northwest ("Kaiser") for the individual market, for sales relative to the new Washington State Health Benefits Exchange. The reasons provided by the OIC for its disapproval are as set forth in the OIC's Letter of Disapproval and in the OIC's SERFF online service. In response,

Kaiser asserts 1) that the OIC's disapproval of its KPIF Binder was due solely to technical errors in two cells of the Plans and Benefits Template, specifically the Cost Share Variance Tab of the Plans and Template inadvertently stated that "Eye Glasses for Children" were subject to the deductible under the pediatric vision benefits of two off-Exchange plans; 2) that the contract forms themselves, including the schedules of benefits, correctly provided that eyeglasses and contact lenses were not subject to the deductible, as did the Plans and Benefits Template for the similar on-Exchange plans and that there were no issues with the material content of the contract forms; 3) that the only basis for approval identified by the OIC was the two technical errors in the Plans and Benefits Template for the two off-Exchange plans and therefore the OIC lacked the authority to disapprove the KPIF Binder based solely on those two technical errors; 4) that even if the two technical errors had appeared in a contract form, the OIC lacks the statutory authority to reject the entire group of health plans on that basis; 5) that the OIC exceeded its rule-making authority when it implemented the Washington State SERFF Health and Disability Binder Filing General Instructions; 6) that the OIC's interpretation of the Binder Filing Instructions to allow or require rejection of all plans in the KPIF Binder is arbitrary and capricious; and 7) that the OIC is not precluded by federal or state law from permitting Kaiser to correct the technical errors following the OIC's self-imposed filing deadline of July 31, 2013.

The remedy Kaiser seeks from the undersigned is to determine that the OIC must provide regulatory certification of its plans and present them to the Washington State Health Benefits Exchange as a qualified health plan for 2014.

On August 22, 2013, the undersigned held a first prehearing conference in this matter, which included all parties. The OIC was represented by AnnaLisa Gellermann, Esq., the Deputy Commissioner for OIC's Legal Affairs Division. Kaiser was represented by its outside legal counsel Maren Norton, Esq. and Barbara Nay, Esq. of Stoel Rives LLP law firm in Seattle Washington and Portland, Oregon, respectively. Of significance, first, as above, Kaiser asks that this matter be determined based upon written submissions of the parties and at prehearing conference the OIC expressed no objection to this process. The parties further advised that at this time they are attempting to resolve some or all of the issues in this proceeding. It was determined that the hearing should be scheduled to commence on August 29, 2013 if the parties are unable to resolve the outstanding issues, if one raises an objection to having this matter decided based upon the written submissions of the parties, or should the undersigned decide that based upon the status of the matter after the parties have filed their written arguments and authorities it would be most effective for the hearing in person to proceed.

Thereafter, on August 16, 2013 the undersigned entered a Notice of Hearing herein providing notice that the hearing in this matter would commence on August 29, 2013 at 9:00 a.m.; summarized the issues herein; advised that any interested party might attend the hearing either by telephone or in person; and provided information including telephone access number about how to participate, the location of the hearing and other relevant telephone, email and fax numbers along with other information concerning the hearing and where to call for further information. This Notice was mailed to the parties on August 23, 2013 and subsequently the Notice of Hearing, Kaiser's Request for Hearing, and the OIC's July 31, 2013 Disapproval letter which is the subject of this appeal, were all published on the OIC's website.

On August 29, 2013, the hearing commenced as properly scheduled. At that time, the parties orally presented a joint motion for continuance of this matter until September 3, 2013. The basis for the parties motion for continuance was that they are continuing negotiations about the matters at issue in this proceeding, which negotiations may lead to a settlement of this case. Based upon these representations of the parties, the undersigned granted the parties' motion for continuance, advising that should the parties settle the matter before September 3, 2013 they needed to file a copy of the settlement agreement with the undersigned so that an Order Terminating Proceedings could be entered closing this hearing file. Should the parties be unable to reach settlement of this matter, the hearing shall commence on September 3, 2013 as agreed upon.

Based upon the above activity,

IT IS HEREBY ORDERED that the hearing in this matter is continued to September 3, 2013 at the hour of 9:00 a.m. Pacific Daylight Time, in the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, WA.

This written Order confirms that oral order entered by the undersigned on August 29, 2013.

ENTERED AT TUMWATER, WASHINGTON, this 29<sup>th</sup> day of August, 2013, pursuant to RCW 48.04, Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN  
Chief Presiding Officer

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above:

DATED this 29<sup>th</sup> day of August 2013.

  
KELLY A. CAIRNS