

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

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OFFICE OF
INSURANCE COMMISSIONER

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Chief Presiding Officer
(360) 725-7105

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 13-0240
)	
KAISER FOUNDATION HEALTH PLAN OF THE NORTHWEST,)	NOTICE OF HEARING
)	
A Health Care Service Contractor.)	
_____)	

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

Marin 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,



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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. Further, Kaiser has asked for this adjudicative proceeding to take place on an expedited basis on the grounds that a failure to provide timely resolution would result in imminent and irreparable harm to Kaiser because it will lost the opportunity to participate on the Exchange in 2014, because the OIC must provide regulatory certification to be presented to the Washington State Health Benefits Exchange as a qualified health plan for 2014 before the Washington State Health Benefits Exchange can consider and act on them. Finally, Kaiser asks that, because the factual background of the OIC's decision is not in dispute and this matter deals purely with legal issues, the expedited consideration of its appeal be based upon written submissions of the parties.

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. The undersigned reviewed procedure to be expected at hearing and answered all questions and concerns of the parties. 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 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

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and authorities it would be most effective for the hearing in person to proceed. Second, the OIC advised that it would file a Motion with the undersigned seeking a determination on the proper burden of proof to be applied in deciding this matter. Finally, Kaiser has asked that this matter be heard and decided on an expedited basis, based upon the existing deadlines for making these filings and obtaining certification for Kaiser to offer its individual health benefits plans on the Washington Health Benefit Exchange for 2014. Therefore, this matter has been handled on an expedited basis since the original filing was made with the undersigned on August 21, and will continue to be handled on an expedited basis throughout this proceeding.

The parties are advised that should they have further questions or concerns prior to the hearing date, or to schedule another prehearing conference which would include all parties and the undersigned, they should contact the undersigned's paralegal, Kelly Cairns, at (360)725-7002 or KellyC@oic.wa.gov.

Accordingly, **YOU ARE HEREBY NOTIFIED that a hearing will be held commencing on Thursday, August 29, 2013, at 9:00 a.m. Pacific Daylight Time.** The purpose of this hearing, which will include all parties, is to consider whether Kaiser's filings should be approved as a qualified health plan for the individual market of the Exchange, or additional time given to Kaiser to cure any deficiencies in its proposed plans, or whether the OIC's disapproval of Kaiser's filings for the individual market of the Exchange should be upheld.

The OIC will appear by and through AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division. Her address is Office of the Insurance Commissioner, Legal Affairs Division, P.O. Box 40255, Olympia, WA 98504-0255 and her telephone number is (360) 725-7050. Attorneys Norton and Nay will appear on behalf of Kaiser. Ms. Norton's address is 600 University Street, Suite 3600, Seattle, WA 98101-4109, and her telephone number is (206) 386-7607. Ms. Nay's address is 900 SW Fifth Avenue, Suite 2600, Portland, OR 97204-1268 and her telephone number is (503) 294-9643.

Patricia D. Petersen, Esq., Presiding Officer, who serves as Chief Presiding Officer for the Office of the Insurance Commissioner, has been designated to hear and determine this matter. Her address is Office of Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255. Her telephone number is (360) 725-7105. All interested individuals and entities who have questions or concerns concerning this proceeding should direct them to her paralegal, Kelly Cairns, at the same address. Ms. Cairns' telephone number is (360) 725-7002.

The hearing will be held under the authority granted by the Insurance Commissioner under Chapter 48.04 RCW. The basic facts relied upon are those set forth above, which are more specifically included in the OIC's above-referenced findings letter and in Kaiser's above-referenced Demand for Hearing.

The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08 WAC. All parties may be represented at

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the hearing. They may examine witnesses and fully respond and present evidence and argument on all issues involved.

As required by RCW 34.05.434(2)(i), you are advised that a party who fails to attend or participate in any stage of the proceeding may be held in default in accordance with Chapter 34.05 RCW.

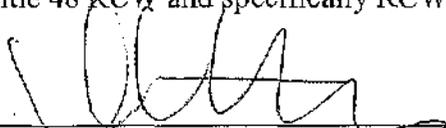
Pursuant to WAC 10-08-040(2) and in accordance with ch. 2.42 RCW, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by ch. 2.42 RCW. A Request for Interpreter form is attached to the original of this Notice, with instructions thereon.

This Notice is provided pursuant to RCW 48.04.010 and RCW 34.05.434.

Based upon the above activity,

IT IS HEREBY ORDERED that the adjudicative proceeding in this matter shall commence on August 29, 2013, at 9:00 a.m. Pacific Daylight Time, continuing on each successive day until terminated, in the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, WA.

ENTERED AT TUMWATER, WASHINGTON, this 22nd day of August, 2013, pursuant to Title 48 RCW and specifically RCW 48.04 and 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: Kaiser Foundation Health Plan of the Northwest, Maren Norton, Esq., Barbara Nay, Esq., Mike Kreidler, James T. Odiome, Molly Nollette, and AnnaLisa Gellermann, Esq.

DATED this 23 day of August, 2013.



KILLY A. CAIRNS