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COMMUNICATIONS SECTION

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SUBJECT: Seattle Children's Hospital, Docket No. 13-0293

Dear Counsel:

This letter is relative to clarifying the issues to be addressed at hearing. Based upon the SCH's, OIC's and Intervenor's written submissions made on April 16, April 18 and April 18, respectively, and upon review of same and argument and input of the parties during prehearing conference held April 21, below are the issues to be addressed at hearing which I believe properly incorporates all parties' submissions and concerns. As indicated, a few are somewhat duplicative but where this is the case then they need not be addressed twice during hearing. As indicated, in Seattle Children's Hospital's Motion to Set Hearing Date and Pre-Hearing Schedule, and for Protective Order filed April 2, SCH has requested that this hearing be scheduled for June 9-11, 2014. Accordingly, as stated during the recent prehearing conferences, these dates are being held open for this proceeding and it is anticipated that the hearing will be scheduled shortly to commence on June 9. Alternatively, we are holding the entire weeks of June 9-13 and the entire week of June 16-20 open in order to provide some flexibility of hearing dates if necessary.

**Legal Issues (all apply to Intervenors' filings for 2014):**

1. As the appealing party, does SCH bear the burden of proving that the OIC's decision to approve the Intervenors' Exchange Plan Networks was incorrect?
  - a. What is the standard of review that should be applied?
2. In the event that the Intervenors' networks as approved for the 2014 plan year are found to be inadequate without inclusion of SCH, what remedy can be directed by the Presiding Officer?
  - a. The remedy sought by SCH is "revocation or reversal of the OIC's approval of these Exchange plans because their networks are inadequate." Other options: Require OIC staff reconsideration of the approvals; imposition of a stay of the approvals unless and until the networks are re-reviewed and approved; vacation of the approvals and remand of the network filings to the OIC for review.
  - b. Does the proceeding affect the WA Exchange and CMS's federal approval of these networks? (The parties agree that the WA Health Care Exchange and federal authorities at least to some extent relied on the OIC's review of the filings and decisions to approve them.)
  - c. To the extent it is reasonable, this issue of available remedies includes a consideration of the positive and negative impacts on the insurance market and enrollees, including the question of whether Intervenors' members are receiving medically necessary services during the 2014 plan year.
3. As of the approval date of July 31, 2013, did Intervenors' filings meet the requirements of federal and state law (the federal ACA, relevant sections of the Washington State Insurance Code, and regulations applicable thereto)? In addition, in deciding this issue, relevant federal and state guidance and official communications will be considered and given their appropriate weight.
  - a. Re Essential Community Providers (ECPs): Do Intervenors' 2014 Exchange plans satisfy the federal and state (if any) requirement(s) to include ECPs in their networks if their networks include the minimum number of ECPs in each required ECP category (specified by the ACA, and regulations and ECP guidance promulgated pursuant to the ACA by the Secretary of the U.S. HHS and any other authoritative sources)?
  - b. Re Essential Health Benefits (EHBs): Do Intervenors' 2014 Exchange plans satisfy federal and state requirements regarding enrollee coverage, including the Essential Health Benefits and access standards?



- b. Did the OIC correctly determine that Bridgespan's network adequately provided coverage for all essential health benefits when it contractually guaranteed in its insurance contracts with its members/enrollees to enter into single case agreements for unique and non-unique services not available from contracted providers to ensure treatment at a cost to enrollees equal to in-network rates?
  - i. In practice, is this contractual guarantee in its insurance contracts with its members/enrollees, and does it ensure adequate access to coverage required by federal and state law?
  
- c. Did the OIC correctly determine that Premera's network adequately provided coverage for all essential health benefits when it contractually guaranteed in its insurance contracts with its members/enrollees to enter into single case agreements for unique and non-unique services not available from contracted providers to ensure treatment at a cost to enrollees equal to in-network rates?
  - i. In practice, is this contractual guarantee in its insurance contracts with its members/enrollees, and does it ensure adequate access to coverage required by federal and state law?

**SCH's Factual Issues (if relevant to the above stated legal issues):**

1. What EHB pediatric services are uniquely available at SCH?
2. What is the level of demand for EHB pediatric services in SCH's service area?
3. What is the capacity of other facilities in SCH's service area to provide EHB pediatric services?
4. Has SCH refused to contract with the Intervenor at generally applicable payment rates or refused to contract under reasonable terms and conditions?
5. What are the consequences of omitting SCH from the Intervenor's networks?
6. To what extent, if any, was the OIC aware of the facts relevant to questions B-F when it approved the Intervenor's plans?

Finally, on April 30, 2014, I received and filed SCH's Amended Demand for Hearing, which documents that SCH is no longer pursuing its demand for hearing regarding the OIC's approvals of Coordinated Care's rate filing and further states that *[w]hile the outcome of this case is still of great interest to Coordinated Care, it no longer has a directly-affected plan in the 2014 Health Exchange*. Additionally, on May 5, 2014, I received and filed Stipulation to Coordinated Care Corporation's Withdrawal as Intervenor executed by all parties which documents that SCH and Coordinated Care have reached an agreement and that SCH has filed its Amended Demand for

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Hearing eliminating the issues of the OIC's approval of Coordinated Care's Exchange filing. Therefore, on the basis of this Amended Demand for Hearing and Stipulation, on this date I entered and filed the parties' [Proposed] Order Authorizing Coordinated Care Corporation's Withdrawal of Intervenor.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia D. Petersen", written over the typed name.

Patricia D. Petersen  
Chief Presiding Officer