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2014 APR 18 P 4: 39

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OIC HEARINGS UNIT  
PATRICIA L. PETERSEN  
CHIEF PROCEEDING OFFICER

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In the Matter of )  
)  
SEATTLE CHILDREN'S HOSPITAL )

Case No. 13-0293

)  
) OIC STAFF STATEMENT OF  
) PROPOSED ISSUES AND  
) LIST OF POSSIBLE WITNESSES  
)

Pursuant to the prehearing telephone conference on April 14, 2014, and without waiving or prejudice to its position that Seattle Childrens Hospitals' ("SCH") hearing demand presents no material issue of fact and is subject to dismissal as a matter of law, the OIC staff submits the following proposed statement of legal issues and related factual issues to be addressed at hearing, and a preliminary list of proposed witnesses.

**Proposed Issues**

1. As the appealing party, does SCH bear the burden of proving that the OIC's decision to approve the Carrier parties' Exchange Plan networks was incorrect?
  - a. What is the standard of review that should be applied?
  
2. As of the approval date of July 31, 2013 did the OIC correctly apply both state and federal law (the ACA and network adequacy standards, both codified and contained in federal guidance and official communications) in approving the Health Carriers' networks?
  - a. Did the OIC staff appropriately rely on the regulations and guidance promulgated by the United States Department of Health and Human Services pursuant to this statute?
    - i. Does a 2014 Exchange plan satisfy the requirement to include Essential Community Providers ("ECPs") in its network if the network includes the minimum number of ECPs in each required ECP category specified by the regulations and ECP guidance

promulgated by the Secretary of the United States Department of Health and Human Services

- b.** Did OIC correctly apply Federal and state law regarding enrollee coverage, including the Essential Health Benefits and access standards, in approving the Health Carrier's Exchange plans?

  - i.** Must the OIC disapprove issuers' provider networks that do not include contracts with providers for all unique services available in Washington State?
  - ii.** Do federal and state network adequacy laws prohibit the use of alternative arrangements including but not limited to "single case agreements"?
  
- c.** What is the effect when an enrollee of one of the Health Carrier's Exchange plans requires a unique service that is only provided by an out-of-network provider?

  - i.** Did the OIC correctly determine that Coordinated Care's network adequately provided coverage for all essential health benefits when it contractually guaranteed to enter single case agreements for unique services not available from contracted provider to ensure treatment at a cost to enrollees equal to in-network rates?
  - ii.** Did the OIC correctly determine that Bridgespan's network adequately provided coverage for all essential health benefits where it agreed that its enrollees will not incur added costs when receiving medically necessary services not available in its contracted network?
  - iii.** Did the OIC correctly determine that Premera's network adequately provided coverage for all essential health benefits where it contractually guaranteed that enrollees receiving unique service from SCH would receive them as "in network" benefits?
  
- 3.** In the event that the Health Carrier's networks as approved for the 2014 plan year are found to be inadequate without the inclusion of SCH, what remedy can be directed by the Hearings Officer, and what is the impact on the insurance market and enrollees?

## LIST OF POSSIBLE WITNESSES

OIC Staff submits the following list of potential witnesses who may be called at the Hearing on this matter.

**1. Representatives of the U.S. Department of Health and Human Services (“HHS”) and/or the U.S. Centers for Medicare and Medicaid Services Center for Consumer Information and Insurance Oversight (“CCIIO”)**

These representatives may be called to testify regarding the requirements of the federal Affordable Care Act (“ACA”), including the rules promulgated by HHS and CCIIO to implement it, and the authority of federal guidance on implementation of the ACA. They may also be called to testify regarding damages and/or the effect on the national health insurance market of the relief requested by SCH. These experts may also be called to rebut any testimony presented by other parties.

**2. Insurance Regulators of Sister States**

These witnesses may be called to testify regarding the requirements and implementation of the ACA, including the rules promulgated by HHS and CCIIO, and the authority of federal guidance on implementation of the ACA. They may be called to testify regarding the review and approval of Exchange plans under the ACA. These witnesses may also be called to rebut any testimony presented by other parties.

**3. Representative(s) of the Washington Health Benefit Exchange (“WAHBE”), Washington HealthPlanFinder.**

These witnesses may be called to testify regarding the WAHBE’s role in certifying qualified health plans (“QHPs”) for sale on the WAHBE, the process of granting the Health Carrier’s’ plans’ certification, the effect of that certification, and whether that certification was appropriate under state and federal law. They may also be called to testify regarding damages and/or the effect of the relief requested by SCH on the WAHBE and the Washington health insurance market. These witnesses may also be called to rebut any testimony presented by other parties.

**4. Representative(s) of the Washington State Department of Health**

These witnesses may be called to testify regarding factual issues, including regarding the health care system in Washington. They may also be called to testify regarding damages and/or the effect of the relief requested by SCH on the Washington health care system and the availability of health care services to Washingtonians. These witnesses may also be called to rebut any testimony presented by other parties.

**5. Representative(s) of the Washington State Health Care Authority**

These witnesses may be called to testify regarding factual issues, including regarding the Washington health care system. They may be called to testify regarding the WAHBE's formation and its role in the Washington health insurance market. They may also be called to testify regarding the implementation of the ACA, including the rules promulgated by HHS and CCIIO to implement it, and the authority of federal guidance on implementation of the ACA. They may also be called to testify regarding damages and/or the effect of the relief requested by SCH on the Washington health insurance market, the Washington health care system, and the availability of health care services to Washingtonians. Finally, these witnesses may be called to rebut any testimony presented by other parties.

**6. Molly Nollette**

**7. Jennifer Kreitler**

Ms. Nollette is the OIC's Deputy Commissioner for Rates and Forms, the division responsible for review and approval of rates and forms for insurance products sold in Washington, including the Health Carrier's' Exchange plans. Ms. Kreitler was a forms analyst in the Rates and Forms division at the time of this approval, and is now the Healthcare Consumer Access Manager for that division. Ms. Nollette and Ms. Kreitler may be called to testify regarding factual issues, including the review and approval of the Health Carrier's' plans. Ms. Nollette and Ms. Kreitler may also be called to testify regarding the requirements of the ACA, including the federal rules and guidance implementing it, as well as OIC's application of those requirements in approving the Health Carrier's' Exchange plans. They may be called to testify regarding the requirements of Washington law governing network adequacy and OIC's application of those requirements in approving the Health Carrier's' Exchange plans. Finally, they may be called to rebut any testimony presented by other parties.

**8. Beth Berendt**

Ms. Berendt is the OIC's former Deputy Commissioner for Rates and Forms. Ms. Berendt personally approved both Premera's and BridgeSpan's Exchange networks. She may be called to testify regarding factual issues, including the review and approval of the Health Carrier's' plans. She may also be called to testify regarding the requirements of the ACA, including the federal rules and guidance implementing it, as well as OIC's application of those requirements in approving the Health Carrier's' Exchange plans. She may be called to testify regarding the requirements of Washington law governing network adequacy and OIC's application of those requirements in approving the Health Carrier's' Exchange plans. Finally, she may be called to rebut any testimony presented by other parties.

**9. Kate Reynolds**

Ms. Reynolds is a Special Assistant to the Washington State Insurance Commissioner in OIC's Policy and Legislation division. Ms. Reynolds leads the rulemaking work group that is currently updating Washington's administrative regulations on network access.

She may be called to testify regarding the requirements of those rules as they related to Exchange plans for 2014, as well as the requirements of the revised rules as they relate to Exchange plans for 2015. (Note: as of this writing, the proposed revisions of these rules for 2015 have not been adopted. Whether any revisions will be adopted and, if so, what revisions, has not yet been determined. This determination will be made prior to the expected hearing date in this matter.) Ms. Reynolds may be called to rebut any testimony presented by other parties.

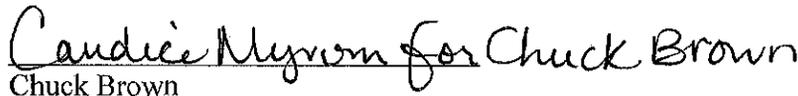
#### **10. Witness Reservations:**

OIC reserves the right to supplement this list as specific witnesses are identified, and as discovery progresses. OIC further reserves the right to amend this witness disclosure, including deletion of witnesses, or to choose not to call any listed or later-identified witness at the time of the hearing. OIC Staff reserves the right to call any witnesses identified by any other party.

#### **No Waiver:**

OIC Staff does not waive the right to object to testimony or exhibits presented by any witness identified by any other party. Further, OIC Staff does not waive any rights regarding these witnesses or their testimony or exhibits, whether provided in deposition, at hearing, or otherwise. This includes any applicable rights, including those provided by the Washington Rules of Civil Procedure, the Administrative Procedure Act, or applicable federal or case law.

SIGNED this 18<sup>th</sup> day of April, 2014, at Tumwater, Washington.

  
Candice Myron for Chuck Brown  
Chuck Brown

#### **CERTIFICATE OF MAILING**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing OIC STAFF STATEMENT OF PROPOSED ISSUES AND LIST OF POSSIBLE WITNESSES on the following individuals via Hand Delivery, US Mail and e-mail at the below indicated addresses:

**VIA HAND DELIVERY TO:**

OIC Hearings Unit  
Attn: Patricia Petersen, Chief Hearings Officer  
5000 Capitol Blvd  
Tumwater, WA 98501

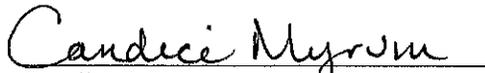
**VIA EMAIL TO:**

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SIGNED this 18<sup>th</sup> day of April, 2014, at Tumwater, Washington.

  
Candice Myrum