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STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)
)
Seattle Children's Hospital,)
)
A Washington Not-For-Profit Corporation,)
)
and)
)
Coordinated Care Corporation, a Health)
Maintenance Organization; **Bridgespan**)
Health Company, a Health Services)
Contractor; and **Premera Blue Cross,**)
a Health Services Contractor,)
)
Petitioners.)

Docket No. 13-0293
FINAL ORDER ON PETITIONS
TO INTERVENE PURSUANT TO
RCW 34.05.443

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NATURE OF PROCEEDING

On October 22, 2013, Seattle Children's Hospital ("SCH") filed a Demand for Hearing to contest the Insurance Commissioner's ("OIC") approvals of the individual market Exchange filings of Coordinated Care Corporation, Molina Healthcare of Washington, Inc., Premera Blue Cross and Bridgespan Health Company. Thereafter, on December 2, 2013, Coordinated Care and Bridgespan filed Petitions to Intervene in this matter and on December 3, 2013 Premera Blue Cross filed its Petition to Intervene. On December 12, 2013, SCH filed its Seattle Children's Hospital's Response to Petitions to Intervene, stating that it does not wholly oppose the Petitioners' intervention but requests that (should intervention be granted) conditions and limitations on Petitioners' discovery and motions practice should be imposed on their intervention. Subsequently, on December 12, 2013 Petitioners filed their Intervenors' Joint Reply in Support of Petitions for Intervention, arguing that no limitations or conditions should be placed on their intervention. During prehearing conference held November 18, 2013, which included the OIC, SCH, and Petitioners, the OIC stated it did not oppose intervention by these three Petitioners and has not expressed an opinion regarding SCH's request for conditions and limitations on intervention. The proceeding herein, therefore, is to consider 1) whether Petitioners' Petitions to Intervene meet the requirements for intervention set forth in RCW 34.05.443; and 2) SCH's request that (if intervention is granted) conditions and limitations be imposed on Petitioners' intervention as specified in SCH's Response. No party has requested oral argument in this matter and it is decided here based upon the above referenced pleadings of the parties and the hearing file.

SCH's Demand for Hearing

1. On October 22, 2013, Seattle Children's Hospital ("SCH") filed a Demand for Hearing pursuant to RCW 48.04.010 and 34.05.413, to contest the Insurance Commissioner's ("OIC") approval of the individual market Exchange rate request filings of Molina Healthcare of Washington, Inc., Coordinated Care Corporation (Coordinated Care), Premera Blue Cross (Premera) and Bridgespan Health Company (Bridgespan). SCH asserts that it is aggrieved or adversely affected by these approvals, which it reflects were granted by the OIC September 5, 2013, September 4, 2013, July 31, 2013 and July 31, 2013, respectively, because SCH is the only pediatric hospital in King County, is the preeminent provider of pediatric specialty services in the Northwest, and many of its services are not available elsewhere in the Northwest. Briefly, SCH asserts that because none of these four OIC-approved Exchange plans has contracted with SCH to provide services to plan participants, current and future SCH patients and families who obtain insurance in these Exchange plans for their ongoing care will not be able to access care at SCH as an in-network provider. Because of the absence of appropriate access to pediatric services in these networks, SCH argues, children and families enrolled in these plans will be faced with the choice of not receiving appropriate care, or of paying co-insurance or the like, if they do. Further, SCH argues that many patients enrolled in these Exchange plans who require services available only at SCH are likely to present for services at SCH regardless of its network status, that many of these patients are more acutely ill and require more services, which thereby reduces resources available for other SCH patients and impairs the ability of SCH to serve the pediatric healthcare needs of the region. Finally, SCH argues that SCH will not be fairly compensated for these services because of its exclusion from these Exchange plan networks and therefore in these and other ways OIC's actions have prejudiced SCH and its patients and that the interests of SCH and its patients are among those that the OIC was required to consider when it reviewed these Exchange plans.

Petitions to Intervene filed by Premera, Bridgespan and Coordinated Care

2. On October 29, 2013, November 14, and November 18, respectively, Premera, Bridgespan and Coordinated Care filed Notices of Appearance in this matter. Thereafter, on December 2 Coordinated Care and Bridgespan filed Petitions to Intervene and on December 3 Premera filed its Petition to Intervene. During prehearing conference held November 18, 2013, which included the OIC, SCH, Premera, Coordinated Care and Bridgespan, the OIC advised that it did not oppose intervention by Premera, Coordinated Care or Bridgespan. (Molina Healthcare of Washington, Inc., filed neither a Notice of Appearance nor a Petition to Intervene and is therefore not being considered as a participant in either the instant Motions to Intervene or the later full hearing in this matter.)

While Bridgespan and Premera base their Petitions to Intervene on CR 24, the Insurance Commissioner has not specifically adopted CR 24 to govern intervention

in administrative proceedings before this agency (see WAC 284-02-070(2)(e)(i)). CR 24 does, however, serve as guidance in considering the three Petitions to Intervene which are at issue herein. CR 24(a) provides:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

RCW 34.05.443 applies to intervention in administrative proceedings in this state. RCW 34.05.443(1) provides:

(1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

Coordinated Care

3. Coordinated Care correctly cites RCW 34.05.443 as authority for its Petition to Intervene. Considering factors such as the stage of the proceedings, the reasons for and length of any delay in intervening and the prejudice to other parties if intervention is permitted, it is here concluded that said Petition was timely filed, that the undersigned has not rendered any substantive rulings or decisions, and no party would be prejudiced if intervention is permitted. Second, Coordinated Care argues, in this action SCH requests, *inter alia*, reconsideration, revocation or reversal of the OIC's approval of Coordinated Care's filing (which approval was actually mandated by the Final Order in Docket No. 13-0232 wherein Coordinated Care was the Respondent). Coordinated Care requests leave to intervene because if SCH obtains the decision it seeks in this action, Coordinated Care argues, the result might require the removal of Coordinated Care's plan from the 2014 Exchange. Coordinated Care is, in fact, so situated that, absent intervention, its protection of its interest might be impaired or impeded. Third, absent intervention, Coordinated Care's interest is not likely to be adequately represented by the existing parties because those parties' interests are different from those of Coordinated Care. In addition, Coordinated Care's and SCH's situations here have common questions of law. Therefore, in considering all appropriate factors required to be taken into account under RCW 34.05.443, with guidance provided by CR 24(a), and applicable case law, it is hereby determined that Coordinated Care should be permitted to intervene. Said intervention is permissive under RCW 34.05.443 and is not as a matter of right under CR 24(a).

Bridgespan

4. With regard to Bridgespan's Petition to Intervene, first, considering factors such as the stage of the proceedings, the reasons for and length of any delay in intervening and the prejudice to other parties if intervention is permitted, it is here found that said Petition was timely filed, that the undersigned has not rendered any substantive rulings or decisions, and that no party would be prejudiced if intervention is permitted. Second, Bridgespan has a direct interest in this action. In this action, Bridgespan argues, SCH requests the undersigned, *inter alia*, to reverse the OIC's approval of Bridgespan's Exchange plan and argues that if SCH obtains the decision it seeks in this action the result might require the removal of Bridgespan's plan from the 2014 Exchange. Bridgespan is, in fact, so situated that, absent intervention, its protection of its interest might be impaired or impeded. Third, Bridgespan's interest is not adequately represented by the existing parties: as Bridgespan asserts, the OIC's, SCH's and Bridgespan's interests are distinct from each other and therefore disposition of this case without the participation of Bridgespan would leave its interests inadequately represented. Fourth, Bridgespan's and SCH's situations here have common questions of law. Therefore, in considering all appropriate factors required to be taken into account under RCW 34.05.443, with guidance provided by CR 24(a), and applicable case law, it is hereby determined that Bridgespan should be permitted to intervene. Said intervention is permissive under RCW 34.05.443 and is not as a matter of right under CR 24(a).

Premera

5. With regard to Premera's Petition to Intervene, considering factors such as the stage of the proceedings, the reasons for and length of any delay in intervening and the prejudice to other parties if intervention is permitted, it is here found that said Petition was timely filed, that the undersigned has not rendered any substantive rulings or decisions, and that no party would be prejudiced if intervention is permitted. Second, Premera has a direct interest in this action. In this action, Premera argues, SCH requests the undersigned, *inter alia*, to reverse the OIC's approval of Premera's Exchange plan and, if SCH obtains the decision it seeks in this action, the result might require the removal of Premera's plan from the 2014 Exchange. Premera is, in fact, so situated that, absent intervention, its protection of its interest might be impaired or impeded. Third, Premera's interest is not adequately represented by the existing parties: as Premera asserts, the OIC's, SCH's and Premera's interests are distinct from each other and therefore disposition of this case without the participation of Premera would leave its interests inadequately represented. Fourth, Premera's and SCH's situations here have common questions of law. Therefore, in considering all appropriate factors required to be taken into account under RCW 34.05.443, guidance provided by CR 24(a), and applicable case law, it is hereby determined that Premera should be permitted to intervene. Said intervention is permissive under RCW 34.05.443 and is not as a matter of right under CR 24(a).

6. Based upon the above considerations, it is hereby concluded that Coordinated Care, Bridgespan and Premera should be permitted to intervene in this matter pursuant to RCW 34.05.443. This conclusion is based upon RCW 34.05.443 which governs intervention in administrative proceedings in this state, guidance from CR 24(a), and applicable case law cited by the parties, together with a review of SCH's Demand for Hearing filed by SCH October 22, 2013; Petitioners' Petitions to Intervene; the statements of the parties at prehearing conference held November 18, 2013 including the OIC's statement that it does not oppose intervention by these three Petitioners; SCH's Response to Petitions to Intervene; Petitioners' Joint Reply in Support of Petitions for Intervention filed December 12, 2013; all arguments and authorities presented in these pleadings and the entire hearing file, it is hereby concluded that it is the interests of justice to allow Coordinated Care, Bridgespan and Premera to intervene in this matter and such intervention will not impair the orderly and prompt conduct of the proceedings, as contemplated by RCW 34.05.443, CR 24(a), and applicable case law. The issue of whether conditions and limitations should be imposed upon their intervention pursuant to RCW 34.05.443(1) is considered and decided below.

SCH's Request for Conditions and Limitations to be Imposed upon Petitioners.

7. In SCH's Response to Petitions to Intervene, SCH asks the undersigned to use her statutory authority under RCW 34.05.443(2) to set limitations on discovery and motions practice upon Petitioners' participation, arguing that the issues to be addressed herein are focused and do not require extensive discovery and the fact that prompt resolution of this action is of significance to all parties including the Petitioners. SCH therefore requests 1) that any discovery by Petitioners be subject to preapproval of the undersigned; 2) that Petitioners be considered one party for the purpose of discovery; and 3) that Petitioners be required to confer prior to filing any motion, responsive filing, or brief to determine whether their positions could be consolidated. In turn, SCH advises it will agree to share its existing discovery responses with Petitioners (subject to entry of an appropriate protective order).
8. Petitioners, however, argue that they should be granted intervention and their intervention should not be limited in any way. In their Intervenor's Joint Reply in Support of Petitions for Intervention, Petitioners argue *Given what is at stake, the intervenors should not be prohibited from or limited in any way from presenting a full defense in this proceeding ... [and] request that the [undersigned] grant their respective petitions for intervention without any limitations* or conditions placed on their joint or separate discovery, motions practices or any other activities involved in this action. Petitioners base their request on their assertions 1) that although SCH brought the action against the OIC it is the Petitioners and their enrollees who are the parties with the greatest stake in this action. SCH also argues 2) that SCH has provided no evidence or compelling argument that any conditions are necessary to ensure the orderly and prompt conduct of proceedings under RCW 34.05.443 and that as with any discovery dispute if Petitioners propound discovery that SCH believes is improper, SCH can confer with Petitioners

pursuant to CR 26(i) and WAC 284-02-070(2)(e)(i) or involve the undersigned pursuant to WAC 284-02-07(2)(e)(ii); and 3) that *ordering the Petitioners to combine their presentations of discovery and participation in the proceedings, and consult each other prior to taking any action, is both unnecessary and inappropriate.*

9. RCW 34.05.443 provides, in its entirety:

(1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(2) If a petition qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(3) The presiding officer shall timely grant or deny each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of the decision granting, denying or modifying intervention to the petitioner for intervention and to all parties.

10. Adjudicative proceedings arising from acts of the Insurance Commissioner are, pursuant to Title 48 RCW, the Insurance Code, governed by Title 34 RCW, the Administrative Procedure Act, and Chapter 10-08 WAC, and case law pertinent thereto. While it is appropriate to look to Court Rules for guidance in many situations – and in fact RCW 34.05.446(3) provides that *the presiding officer may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules*

26 through 36 of the superior court civil rules, and in WAC 284-02-070 the Insurance Commissioner has actually adopted Superior Court Civil Rules 26 through 37, RCW 34.05.443 is the specific statute which governs intervention in the adjudicative proceeding herein and, as stated therein, intervention is up to the discretion of the presiding officer based upon criteria set forth therein. Further, RCW 34.05.443 specifically allows the presiding officer to impose conditions upon intervenors' participation and provides numerous examples of significant conditions and limitations which can be placed on intervention which are not set forth in the civil rules regarding intervention. Likewise, Petitioners and the existing parties should note that RCW 34.05.446 governs subpoenas, discovery and protective orders in adjudicative proceedings before this agency and, as cited above, permits the presiding officer to decide whether to allow discovery at all, based upon criteria set forth in RCW 34.05.446.

11. Based upon a consideration of the above arguments and authorities presented by the parties, and applicable rules including particularly RCW 34.05.443, it is hereby concluded that it is reasonable and appropriate in these proceedings to allow Petitioners to intervene on the following conditions:
 - a) Pursuant to RCW 34.05.443(2)(c), Petitioners must coordinate with each other and combine their discovery requests, so as to promote the orderly and prompt conduct of the proceedings.
 - b) It is not required that the undersigned give prior approval of any discovery of Petitioners. However, pursuant to RCW 34.05.443(2)(b), SCH and the OIC are advised that should either the OIC or SCH have any concerns about the nature, subject, scope, relevancy or quantity of any of Petitioners' joint discovery requests, they are encouraged to raise these concerns in a request brought under RCW 34.05.443 and .446, which will thereby allow the undersigned to decide *whether to permit the taking of depositions, the requesting of admissions and all other procedures authorized by rules 26 through 36 of the superior court civil rules* as is specifically authorized under that section. Petitioners, the OIC and SCH are cautioned to remain reasonable and resourceful in their use of combined discovery and be mindful that RCW 34.05.446(3) specifically allows the undersigned to *condition use of discovery based upon a showing of necessity and unavailability by other means*, and in exercising her discretion she shall consider, in particular, ... (b) *whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.*
 - c) It is not required that the undersigned give prior approval of any motions of Petitioners and it is not required that Petitioners file combine their motions. However, pursuant to RCW 34.05.443 and particularly 34.05.443(2), SCH and the OIC are advised that should either the OIC or SCH have any concerns about the

nature, subject, scope, relevancy or quantity of any of Petitioners' motions, they are encouraged to raise these concerns in a request brought under RCW 34.05.443, which will thereby allow the undersigned to decide whether this Order should be modified to impose further limitations on Petitioners' intervention as authorized by RCW 34.05.443(2). Petitioners, the OIC and SCH are cautioned to remain reasonable and resourceful in their use of motions and be mindful that RCW 34.05.443 specifically allows the undersigned to limit Petitioners' participation in these proceedings at any time pursuant to RCW 34.05.443(1) and (2) so as to promote the orderly and prompt conduct of the proceeding and the interests of justice.

- d) Pursuant to RCW 34.05.443(2)(c), depending upon the pleadings of the Petitioners filed closer to the hearing date, it is likely that Petitioners may be required to combine their presentations of evidence and argument, cross-examination and other participation in promotion of the orderly and prompt conduct of the proceedings.
- e) This Order imposing conditions and limitations on Petitioners' participation as intervenors in this adjudicative proceedings may be modified at any time, pursuant to RCW 34.05.443(1) and (3).

ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that Premera, Coordinated Care and Bridgespan are granted leave to intervene in this proceeding;

IT IS FURTHER ORDERED that the Petitioners' petitions for intervention are granted conditioned upon, and limited by, the conditions and limitations set forth above;

IT IS FURTHER ORDERED that pursuant to RCW 34.05.443(1) and (2) the conditions and limitations imposed upon Petitioners' intervention may be modified at any time.

ENTERED AT TUMWATER, WASHINGTON, this 19th day of December, 2013, pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW and specifically RCW 34.05.443; and regulations applicable thereto.



PATRICIA D. PETERSEN, J.D.
Chief Presiding Officer

ORDER GRANTING PETITIONS TO INTERVENE

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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: Michael Madden, Esq., Gwendolyn C. Payton, Esq., Timothy J. Parker, Esq., Maren R. Norton, Esq., Mike Kreidler, James T. Odiorne, J.D., CPA, Molly Nollette, AnnaLisa Gellerman, Esq., and Charles Brown, Esq.

DATED this 19th day of December, 2013.


KELLY A. CAIRNS