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STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

In re	}	DOCKET NO. 13-0293
Seattle Children's Hospital's Appeal of OIC's Approvals of HBE Plan Filings	}	JOINT REPLY IN SUPPORT OF MOTION IN LIMINE OF PREMERA, OIC, AND BRIDGESPAN REGARDING POST-APPROVAL MATTERS

Premera Blue Cross ("Premera"), the Office of the Insurance Commissioner ("OIC"), and BridgeSpan Health Company ("BridgeSpan") submit this reply in support of their joint motion in limine regarding post-approval matters ("Motion").

**I. INTRODUCTION**

This proceeding concerns the OIC's July 31, 2013 approval of Premera's and BridgeSpan's plans. The inquiry before this tribunal is whether the process leading to that approval was proper. The only evidence that can be relevant to such an inquiry is evidence of what led up to the approval itself. Everything that occurred after the approval in July 2013 is therefore inadmissible. The requested relief is both ascertainable by this Court as well as consistent with the relief requested by SCH.

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## II. LEGAL ARGUMENT

### A. **This Tribunal Can Easily Determine Whether Particular Evidence Is Dated After July 31, 2013, and Is Therefore Inadmissible.**

In Seattle Children's Hospital's Response to Joint Motion in Limine of Premera, OIC and BridgeSpan Regarding Post-approval Matters ("Opp."), Seattle Children's Hospital ("SCH") claims that the Motion failed to identify "with sufficient specificity" the evidence it seeks to exclude. Opp. at 3. SCH is wrong—this tribunal would have no trouble identifying whether a piece of evidence concerns something that occurred after July 31, 2013, the date the OIC approved the networks in question.

### B. **SCH May Not Assert Standing on Behalf of Its Patients.**

Contrary to SCH's assertions, Opp. at 3-4, evidence regarding the harms suffered by Premera members who sought treatment at SCH is similarly irrelevant. As discussed more extensively in Premera's Pre-Hearing Memorandum, SCH cannot establish standing by showing harm to its patients. Premera Blue Cross's Pre-Hearing Memorandum at 22. In order to secure relief from this tribunal, SCH must show that SCH itself was aggrieved. *Id.* Whether or not its patients—including SCH witnesses Alexandra Szablya and Jenni Clark—were aggrieved is irrelevant to showing SCH's alleged harm. *Id.*

### C. **Ms. Nollette Was Fully Aware When She Confirmed the Approval that SCH Was Not In-Network but that an Appropriate BLE Process Existed Instead.**

SCH further alleges that Molly Nollette, who replaced Elizabeth Berendt as Deputy Commissioner of Rates and Forms in June 2013, did not know that SCH was not in Premera's network when she confirmed Ms. Berendt's approval of the networks. Opp. at 4. This mischaracterizes the record. Ms. Nollette replaced Ms. Berendt as OIC Deputy Commissioner of Rates and Forms after OIC analyst Jennifer Kreidler, under Mr. Berendt's supervision, had approved the Premera networks. Therefore, Ms. Nollette had no occasion to address whether SCH was in the Premera networks.

Deposition Exhibit 86 contains email exchanges in early April 2013 in which Ms. Kreitler asked Premera to confirm that various hospitals, including SCH, were not part of the LifeWise Connect or Premera Heritage Signature networks. And **Jim Tedford of Premera** responded by saying that those providers “are not included in the LifeWise Connect or Heritage Signature networks.” So before the OIC approved Premera’s networks in July 2013, the OIC understood that SCH was not going to be in-network.

Plainly Ms. Berendt understood this as well while she was reviewing Premera’s networks. Ms. Berendt herself testified that she and Ms. Kreitler worked closely together. Berendt 31-32. She testified that Ms. Kreitler would come to her to discuss issues, concerns, and particular problems regarding the proposed networks as they dealt with “the Premera product development.” *Id.*

Exhibit 87 is an email also from the Spring of 2013 in which Premera specifically informed the OIC that SCH would not be in its networks. And Exhibit 91 is a May 6, 2013 letter to Ms. Berendt from Premera’s in-house counsel Kitti Cramer with a CD that was enclosed, again fully informing the OIC—and indeed Ms. Berendt herself—that SCH would not be in Premera’s Exchange networks. The OIC approved Premera’s networks understanding they would not include SCH, based on Premera’s benefit level exception system that would provide Exchange members access to medically-necessary SCH services.

As detailed in Section III.C.2. of Premera Blue Cross’ Pre-Hearing Memorandum, after Ms. Nollette was contacted by SCH she both reviewed prior correspondence from Premera to Ms. Berendt, and communicated with Premera herself, and thereby learned that Premera “had a process in place to provide a benefit level exception.” Nollette 43:8-19; Ex. 103. Ms. Nollette further learned that Premera “had contracts in place with Seattle Children’s that they would invoke in case they needed them.” *Id.* It was on this basis that Ms. Nollette confirmed Ms. Berendt’s approval of the Premera networks. *Id.*; Nollette 64; Exs. 86-87, 99-103.

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**D. SCH's Request for Relief Only Challenges the OIC's Original Approval of Interveners' Networks.**

SCH contends that evidence concerning the operation of the networks is relevant because the OIC is required to review monthly "Form A filings" from the carriers. But SCH has not sought to challenge SCH's disposition of Form A Filings as part of its claim for relief. The instant dispute is about whether the OIC properly approved Premera's networks.

**E. The Motion Was Timely Filed.**

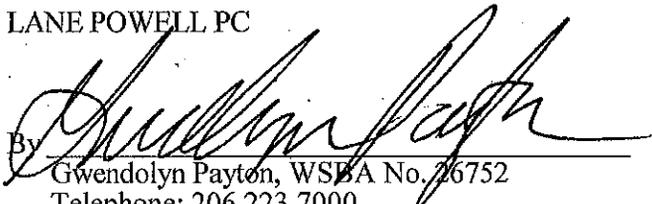
In its response to the Motion, SCH suddenly claims that the Motion should have been submitted by August 8, 2014, in order to allow SCH additional time to prepare its response. Opp. at 6. This argument lacks merit. At the Prehearing Conference held on August 6, 2014, all the parties agreed that prehearing motions would be submitted by August 11, 2014, with responses due by August 14 and replies due by August 15. SCH never asked for additional time to respond to Interveners' motions and has in fact responded according to the timeline agreed upon at the hearing. Moreover, nowhere does SCH make any claims that it has been prejudiced in any way by the agreed-upon timeline.

**III. CONCLUSION**

For the foregoing reasons, this tribunal should exclude from evidence all testimony and documentary evidence that SCH seeks to admit concerning matters that occurred after July 2013.

DATED: August 15, 2014

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**CERTIFICATE OF SERVICE**

I, Ian Rountree, hereby certify under penalty of perjury of the laws of the State of Washington that on August 15, 2014, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

<b><u>OIC HEARINGS UNIT</u></b> Office of the Insurance Commissioner 5000 Capitol Boulevard Tumwater, WA 98501 Email: kellyc@oic.wa.gov	<b><u>Seattle SCHHospital</u></b> Michael Madden Bennett Bigelow & Leedom, P.S. 601 Union Street, Suite 1500 Seattle, WA 98101 Email: mmadden@bblaw.com
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