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Insurance Commissioner

Hearings Unit, DIC  
Patricia E. Robinson  
Hearings Officer

**STATE OF WASHINGTON  
BEFORE THE WASHINGTON STATE  
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of:

**Seattle Children's Hospital Appeal of OIC's  
Approvals of HBE Plan Filings.**

**Docket No. 13-0293**

**SEATTLE CHILDREN'S  
HOSPITAL'S RESPONSE TO  
PETITIONS TO INTERVENE**

**INTRODUCTION**

Seattle Children's Hospital (SCH) submits this single response to the three carriers' motions to intervene, which present generally similar positions and arguments for intervention. SCH asks the Hearings Unit to exercise its statutory authority under RCW 34.05.443(2) to "impose conditions upon the intervenor's participation in the proceedings" and impose reasonable limits on the intervenor's discovery and motions practice.

**BACKGROUND**

SCH filed its demand for hearing on October 22, 2013, asking for a determination regarding whether the OIC failed to follow controlling law in its approval of the Exchange plans Coordinated Care Corporation (CCC), BridgeSpan Health Company, and Premera Blue Cross. SCH has already received and responded to an extensive set of discovery requests from the OIC.

The three carriers now seek to intervene in this action. Despite the assertions of counsel for Premera, there has been no agreement that these motions to intervene are unopposed, or in

SEATTLE CHILDREN'S HOSPITAL'S  
RESPONSE TO PETITIONS TO INTERVENE - 1  
Docket No. 13-0293

**ORIGINAL**

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fact any discussion regarding whether the Hearings Unit should, in deciding whether to grant the motions, exercise its statutory discretion to place limitations on participation by the intervenors.

### ISSUE PRESENTED

Are limitations on discovery an appropriate condition of participation as intervenors, in light of the specific legal issues relevant to resolution of this action?

### EVIDENCE RELIED UPON

SCH relies upon the records and files herein.

### ANALYSIS

RCW 34.05.443(1) requires consideration of whether intervention will “impair the orderly and prompt conduct of the proceedings.” Prompt resolution of this action is of significance to all parties, including intervenors, in order to resolve the legal issues raised by this action. For this reason, the Hearings Unit has ruled that it will set an early hearing date in this action in February or March 2014, with dispositive motions to be filed by January 17, 2014.

RCW 34.05.443(2) gives authority to the Hearings Unit to “impose conditions upon the intervenor’s participation in the proceedings.” Those conditions specifically include:

- Limiting the intervenor’s participation;
- Limiting the intervenor’s use of discovery to promote the orderly and prompt conduct of proceedings;
- Requiring two or more intervenors to combine their presentations of discovery and other participation in the proceedings.

RCW 34.05.443(2)(a), (b), (c). The statute does not limit this authority to impose conditions solely to permissive interventions. *See also, e.g., Beauregard, Inc. v. Sword Servs., LLC*, 107 F.3d 351, 352–53 (5th Cir.1997) (“[i]t is now a firmly established principle that reasonable

conditions may be imposed even upon one who intervenes as of right.”<sup>1</sup> Numerous courts have imposed limitations on the participation of intervenors. *E.g., Planned Parenthood Minnesota, N. Dakota, S. Dakota v. Daugaard*, 836 F. Supp. 2d 933, 943 (D.S.D. 2011) (prohibiting intervenors from engaging in unilateral, independent discovery; requiring permission before engaging in independent discovery; and requiring intervenors to confer before filing independent pleadings); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 21 (D.D.C. 2010) (requiring intervenors to meet and confer prior to the filing of any motion, and to file a joint statement of facts as to any summary judgment motion).

SCH asks the Hearings Unit to use its statutory authority to impose conditions on the intervenors here. Specifically, SCH asks that: (1) any discovery by intervenors be subject to pre-approval by the Hearings Unit; (2) that the intervenors be considered one party for the purpose of discovery; and (3) that the intervenors be required to confer prior to filing any motion, responsive filing, or brief to determine whether their positions could be consolidated. SCH will agree to share its existing discovery responses with intervenors, subject to entry of an appropriate protective order.

Limitations on discovery and motions practice are appropriate here, in light of the focused legal issues to be addressed in this proceeding. Although the intervenors’ motions have asserted that the sole issue to be decided here is whether the OIC complied with the state’s network adequacy requirements under RCW 48.43.045 and WAC 284-43-200, each of the

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<sup>1</sup> See RCW 34.05.510(2)(to the extent not inconsistent with the APA, intervention in an administrative action is governed by court rule); *Columbia Gorge Audubon Soc’y v. Klickitat County*, 98 Wn. App. 618, 623 n.2, 989 P.2d 1260 (1999) (noting that because “Washington’s CR 24 is the same as the federal rule ... we may look to federal decisions and analysis for guidance”).

intervenor ignore the fact that SCH has also specifically raised the issue of whether the OIC complied with the federal and state requirement to include all essential community providers, including pediatric hospitals. *See* 42 U.S.C. § 180310(c)(1); 42 U.S.C. § 256b(a)(4)(M); RCW 48.43.715; WAC 284-43-849. Resolution of this issue does not require extensive discovery.<sup>2</sup>

### PROPOSED ORDER

A proposed order is attached to the Hearing Unit's copy of this pleading.

### CONCLUSION

In order to obtain prompt and appropriate resolution of this action, SCH asks the Hearings Unit to exercise its statutory authority to impose appropriate limitations on the participation of intervenors.

RESPECTFULLY SUBMITTED this 10th day of December, 2013.

BENNETT BIGELOW & LEEDOM, P.S.

By 

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<sup>2</sup> Contrary to the assertion of CCC, this issue has not been raised before the Hearings Unit or resolved in any prior proceeding. The CCC decision did not address these statutes and regulations. *See generally* Phillip A. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 Wash. L. Rev. 805, 831 (1985) (noting that issue preclusion requires, among other things, that the issue decided in the prior litigation be "identical" with the one in the action in question, and that the application of the doctrine not work an injustice on the party against whom the doctrine is to be applied). Even as to the issue of network adequacy, the Hearings Unit noted in its denial of reconsideration of its CCC ruling that the OIC had not fully presented the issues: "Had the OIC presented clearer and more focused arguments, and strong, adequate and consistent evidence to support its current position that Pediatric Specialty Hospitals and Level I Burn Units must be included in the Company's network then this issue may well have been decided differently." *In the Matter of Coordinated Care Corp.*, No. 13-0232, Order on OIC's Motion for Reconsideration, dated November 15, 2013.

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of this document on all parties or their counsel of record on the date below by e-mail and mail on today's date addressed to the following:

**Hearings Unit**

Honorable Mike Kreidler  
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Tumwater, WA 98501

**Office of the Insurance Commissioner**

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 10th day of December, 2013.

  
\_\_\_\_\_  
Julia Crippen  
Legal Assistant

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SEATTLE CHILDREN'S HOSPITAL'S  
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**[PROPOSED] ORDER RE:  
PETITIONS TO INTERVENE**

This matter, having come on for hearing on the motions of prospective intervenors Coordinated Care Corporation, Premera Blue Cross, and BridgeSpan Health Company, and the Hearings Unit having reviewed:

- Coordinated Care Corporation's Petition for Intervention;
- Declaration of Jay Fathi, MD, in Support of Coordinated Care Corporation's Petition for Intervention, with accompanying Exhibits A and B;
- Premera Blue Cross' Petitions to Intervene;
- BridgeSpan Health Company's Petition to Intervene;
- Declaration of Timothy Parker in Support of Bridgespan's Health Company's Petition for Intervention;
- Declaration of Christopher Blanton in Support of Bridgespan's Health Company's Petition for Intervention;

and the records and files herein,

**PROPOSED ORDER RE:  
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NOW, THEREFORE,

The petitions of Coordinated Care Corporation, Premera Blue Cross, and BridgeSpan Health Company to intervene in this action are GRANTED IN PART, subject to the following conditions and limitations:

- (1) Any discovery by intervenors must be submitted to the Hearings Unit for pre-approval.
- (2) The intervenors shall be considered one party for the purpose of discovery; and
- (3) The intervenors are required to confer prior to filing any motion, responsive filing, or brief to determine whether their positions could be consolidated. If any intervenor files a motion, responsive filing, or brief separate from the other intervenors, it shall include in the filed document a certification of compliance with this requirement.

ENTERED AT TUMWATER, WASHINGTON this \_\_\_\_ day of \_\_\_\_\_,  
2013, pursuant to Title 34 RCW; Title 48 RCW; and regulations pursuant thereto.

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PATRICIA D. PETERSON  
CHIEF PRESIDING OFFICER

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PROPOSED ORDER RE:  
PETITIONS TO INTERVENE - 2  
Docket No, 13-0293

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