

FILED

2014 AUG 18¹⁴ A 10:59
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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
BRIDGESPAN HEALTH COMPANY
REGARDING MOTION IN LIMINE
TO EXCLUDE EVIDENCE RE:
SEATTLE CHILDREN'S HOSPITAL
COST STRUCTURE

BridgeSpan's Motion seeking to exclude from this hearing evidence regarding "SCH's cost structure" should be denied for the following reasons:

(1) BridgeSpan's motion is not really directed at excluding evidence of the hospital's "cost structure." Its actual direction is to exclude evidence that, in its evaluation of network adequacy, the OIC failed to follow its own regulation, which required it to determine network adequacy based the "relative availability" of providers and facilities within a plan's service area, including consideration of whether "providers and facilities in the service area [are willing] to contract with the carrier under reasonable terms and conditions."¹ The motion is also intended to exclude evidence that, with respect to the ECP requirement of the ACA, the OIC failed to consider whether exclusion of SCH is justified based on its refusal to "accept the generally applicable payment rates" of the plans.² Both the OIC's failure and the question of whether

¹ Former WAC 284-43-200(4).

² 42 U.S.C. § 18031(c)(2).

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SCH's terms are "reasonable" and in accordance with "generally applicable payment rates" of the plans are directly relevant topics.

(2) In this regard, SCH has submitted evidence reflecting that it offered to contract with the intervenors for their QHPs at their existing commercial rates, and that the intervenors, without further negotiation, informed SCH that it was excluded from their QHP networks. The ACA's prohibition on discriminatory benefit design that discourages enrollments of certain types of patients³ also prevents insurers from designing plans that exclude patient groups considered "too expensive." The OIC and intervenors have repeatedly asserted the intervenors' refusal to contract with SCH for the QHPs was justified because SCH "costs too much," and SCH is entitled to introduce evidence to rebut this contention.

(3) The motion is untimely. Under the Pre-Hearing Order in this matter, motion practice is governed by KCLR (b)(4)(a), which requires six court days notice for non-dispositive motions, and allows 3.5 court days for response. In order to disrupt SCH's hearing preparations, intervenors purposefully sat on this and their other motions in limine until after the August 8 deadline for such filings. For this reason alone, the motion should be denied. This motion could and should have been submitted by August 8th, which would have allowed SCH the appropriate

³ 42 U.S.C. § 18022(b)(4)(B) ("[i]n defining the essential health benefits..., the Secretary shall ... not make coverage decisions, determine reimbursement rates, establish incentive programs, or design benefits in ways that discriminate against individuals because of their age, disability, or expected length of life"); 42 U.S.C. § 18116(a) (prohibiting discrimination relating to any health program based on age or other protected status); 42 U.S.C. § 18031(c)(1)(A) ("the Secretary shall ... require that, to be certified, a plan shall ... not employ marketing practices or benefit designs that have the effect of discouraging the enrollment in such plan by individuals with significant health needs"); 45 C.F.R. § 156.125(a) ("[a]n issuer does not provide EHB if its benefit design, or the implementation of its benefit design, discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions"); 45 C.F.R. § 156.200(e) ("A QHP issuer must not, with respect to its QHP, discriminate on the basis of race, color, national origin, disability, age, sex, gender identity or sexual orientation").

number of days to prepare a response. Intervenor has not provided the slightest excuse for this act of gamesmanship.

DATED this 14th day of August, 2014.

BENNETT BIGELOW & LEEDOM, P.S.

By 

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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 hand delivery on today's date addressed to the following:

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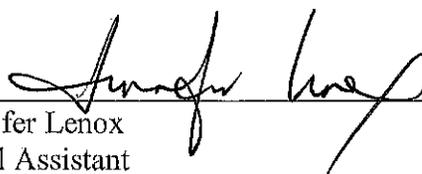
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 14th day of August, 2014.



Jennifer Lenox
Legal Assistant

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