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OIC HEARINGS UNIT
PATRICIA D. PETERSEN
CHIEF PRESIDING 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 OIC
STAFF'S OBJECTION TO NOTICE
OF HEARING**

Plaintiff Seattle Children's Hospital (SCH) submits this response to the OIC staff's "Objection to Notice of Hearing" (dated May 21, 2014), and to Intervenor Premera Blue Cross' Joinder in the Objection (also dated May 21, 2014). The OIC's and Intervenor Premera's Objections are yet another example of their efforts to delay this proceeding and deny SCH its opportunity for a hearing and for relief from the OIC's wrongful approval of the Intervenor's Exchange plans. Further delay is contrary to controlling law, and is a disservice to the public, which could only benefit from a prompt informed ruling on the important questions SCH has raised. Every day of further delay also results in the denial or delay of needed coverage and medical care to children and their families.

The course of proceedings illustrates that although SCH has continued to seek expeditious review on the merits, the OIC has no interest in timely resolution of this action. After SCH filed this action in October 2013, SCH acceded to the OIC's request to seek intervention in the separate Coordinated Care action, then faced the OIC's own objection to SCH's request. The plans then sought intervention in this action, which was granted. Following

a prehearing conference in November 2013, the hearing officer set a briefing schedule for summary judgment motions. The OIC staff then moved to dismiss this action. After the motions hearing in February 2014, the Hearings Unit issued its rulings on those motions, with two orders dated February 20, 2014, one of which denied the OIC staff's motion, and one further order dated March 14, 2014. SCH then, on April 1, 2014, moved to set a hearing date and a pre-hearing schedule. Since April 1, the OIC and the Intervenors have had every opportunity to file a written response or objection to SCH's motion, and the hearing date that it proposed.¹

The OIC staff and the Intervenors have already been aware of the need to file timely responses to motions before the Hearings Unit. As to SCH's motion to intervene in the Coordinated Care proceeding, the OIC staff's written response, apparently by email or writing to the hearing officer (not copied to SCH), was immediate. As to SCH's motion for partial summary judgment, the OIC staff and the Intervenors submitted their written oppositions within two weeks. But as to SCH's motion to set the hearing date, the OIC staff and Intervenor Premera Blue Cross chose of their own accord to delay their submission of any written response for nearly two months (May 21, after the April 1 motion), and 13 days after the Hearings Unit had entered the Notice of Hearing. The OIC staff assertion that "there has been no opportunity to object to the June 9 date or to suggest alternatives" is completely false. Nothing has stopped the OIC and Intervenor Premera from making its position known much earlier.

The OIC staff's and Intervenor Premera's late-filed objection to the hearing date is not well taken. Neither the OIC staff nor Intervenor Premera offer any authority supporting the inadequacy of the notice of hearing. The Hearings Unit's Notice of Hearing, filed May 8, 2014, gave adequate notice of the hearing date, more than one month prior to the scheduled June 9, 2014 hearing date. The parties have been aware of the issues in this action since October 2013.

¹ Under standard civil and administrative rules for timely litigation, a written response to a motion would have been due within days of SCH's motion. *See, e.g.*, King County Superior Ct. R. 7(b) (four days to submit response); WAC 246-10-403(7); 246-11-380(7) (DOH rules providing for motion response within eleven days)).

The OIC is further aware that the Hearings Unit has conducted full hearings on issues within days after a demand is filed.² In those other administrative hearings, the OIC made no objection to the scheduled hearing date, nor did it assert that it was “impossible to prepare adequately,” or that the scheduled hearing date “will interfere with the full and orderly presentation of evidence” and “thorough case preparation.” The OIC staff and Intervenor Premera offer their objections here solely for the purpose of delay.

As to the OIC’s assertion that additional time is needed to obtain “clarification of the remedy sought,” SCH has plainly stated the remedy it seeks. The OIC staff, during the prehearing telephone conference on April 14, 2014, agreed to respond promptly to the Hearings Unit’s request to provide written briefing regarding possible remedies in this action, but has failed in the intervening 38 days to comply with the Hearings Unit’s request. The OIC staff’s objection offers no explanation as to why further delay is necessary to address the issue of remedy.

As to the OIC’s apparent request for additional time for discovery, no further discovery is needed. Since the parties’ witness lists were filed on April 16, 2014, neither the OIC staff nor Interveners have made any further discovery requests.

The OIC staff’s assertion that a “final and definitive list of issues” is still needed ignores the issues statement that the Hearings Unit filed on May 5, 2014, following a telephone hearing and consideration of written submissions by the parties.

The OIC staff fails to identify the “key department witness” that it asserts is not available, or to identify the dates or reasons for unavailability.

Of perhaps greatest significance, neither the OIC’s nor Intervenor Premera’s objections offer any alternative proposals for a hearing date, or make any proffers regarding the amount of time delay that they request. Their only plan is to delay, and to deny SCH its hearing and its

² For example, in the Coordinated Care litigation, the demand for hearing was filed on August 13, 2013, the 3-day hearing was held beginning August 26, 2013, and the Hearings Unit issued its written decision on September 3, 2013. (OIC 13-0232.)

remedy. RCW 48.04.010(1) directs that the Commissioner "shall" hold a hearing upon a written demand by an aggrieved party. SCH is entitled to a hearing. The OIC staff and Intervenor Premera's arguments for seeking further delay are inadequate.

DATED this 22nd day of May, 2014.

BENNETT BIGELOW & LEEDOM, P.S.

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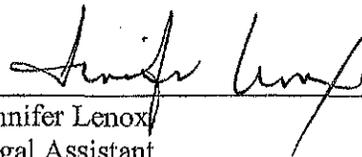
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 22nd day of May, 2014.



Jennifer Lenox
Legal Assistant

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