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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Docket No. 15-0205

**KAISER FOUNDATION HEALTH
PLAN OF THE NORTHWEST,**

**OIC'S MOTION IN LIMINE
TO CLARIFY ISSUES FOR
HEARING**

Respondent.

I. INTRODUCTION

The Office of the Insurance Commissioner ("OIC") requests entry of an order limiting the issue in this hearing to stay of the Cease and Desist order (which has been briefed and is awaiting decision). To the extent that Kaiser seeks to raise the issue of service area definition or the OIC's authority over large group plans or any other such issues, their request should be denied as untimely.

On April 1, 2015, the OIC notified Kaiser of its decision that service areas for its large group plans were unlawfully defined in its health care contracts. Exercising its authority, the OIC directed Kaiser to correct the contracts, and suspended sale of plans until the correction was made.

Kaiser did not appeal OIC's April 1 decision, and instead corrected its health plan contracts as directed.

Subsequently, the OIC discovered that Kaiser continued to sell health plans outside its designated service area. As a result, the OIC issued an order to Kaiser to Cease and Desist all unlawful sales outside its service area. Kaiser has appealed that Cease and Desist Order, and requested that the order be stayed.

Whether or not Kaiser has shown that the order should be stayed is the sole issue that should be considered in this hearing. If Kaiser had wanted to challenge the OIC's

1 directive to define its service areas, it should have appealed the OIC's April 1, 2015
2 decision on that issue within 90 days as required. Kaiser did not, and as a result that
3 decision is final and binding, and this tribunal lacks jurisdiction to consider it.

4 II. STATEMENT OF FACTS

5
6 In 2014, Kaiser submitted filings to the OIC for the large group health plans it
7 intended to sell or renew in 2015. As required, these 2015 filings included Kaiser's
8 "health plan contracts," which are the contracts Kaiser uses with purchasing employers.
9 WAC Chapters 284-43, 284-44, 284-44A and 284-46. Kaiser also submitted the
10 required Access Plan in support of its health plan contracts filings, in which the issuer
11 demonstrates network adequacy for its service area. *See* previously filed Decl. of
Jennifer Kreidler, WAC 284-43-200, WAC 284-43-220 and WAC 284-43-230.

12 Kaiser's Access Plan identified its service area as Clark and Cowlitz counties.
13 Previously filed Exhibit 1, pg. 6. Kaiser's network in those counties was found to be
14 adequate, and the Access Plan was approved. Kaiser previously filed an AADR which
15 was approved by the OIC that enables it to provide services throughout Cowlitz County
and to utilize Cowlitz County in its service area.

16 In early 2015, Kaiser's filing was reviewed, including its health plan
17 contracts.¹ At that point, the OIC discovered a discrepancy between Kaiser's Access
18 Plan and the health plan contracts; those contracts improperly defined Kaiser's service
19 area using zip codes. On April 1, 2015, the OIC sent Kaiser an objection and notice of
20 suspension of its health plan contracts. *See* Exhibit 7, SERFF FILING page 40, and
similar pages.

21 The April 1, 2015 suspension notice informed Kaiser that it was a written
22 statement of particular applicability that finally determined the legal rights, duties,
23

24
25 ¹ Large group plans of this type do not require prior approval from OIC to be sold. *See* WAC
26 284-43-920. If upon later review the OIC determines that an issuer's health plan contracts are not
compliant with the Insurance Code, the OIC will require corrections to be made. The OIC reviewed
Kaiser's filings in early 2015, after Kaiser had begun selling the plans.

1 | privileges, immunities, or other legal interests of Kaiser. *Id.* The objection clearly
2 | informed Kaiser of the basis for OIC's decision:

3 | “The definition of “Service Area” provided [in the health plan
4 | contracts] indicates the service area consists of certain geographic areas
5 | in the Northwest as designated by ZIP code. The definition continues on
6 | to advise the service area may change. Under WAC 284-43-130(29) a
7 | service area must be defined by county or counties and may not be
8 | defined by ZIP code unless allowed by the Commissioner for good cause,
9 | such as geographic barriers which make coverage throughout an entire
10 | county unreasonable. You must redefine your service area by county and
11 | remove the language indicating the service area may be changed.” *Id.*

12 | On April 7, 2015, Kaiser formally responded to the objection by stating its belief
13 | that the definition of service area found in regulation applied only to individual and
14 | small group plans, and not to large group plans. *Id.* Exhibit 7, SERFF Filing, Pg. 7.
15 | Subsequently, representatives from Kaiser contacted Network Access Manager Jennifer
16 | Kreitler to discuss the objection and related issues. *See* previously filed Decl. of
17 | Jennifer Kreitler.

18 | During these conversations with Kaiser, which occurred by phone and via email,
19 | Ms. Kreitler learned that Kaiser enabled many employers who purchased their large
20 | group health plans to offer insurance to participants outside of Kaiser's service area of
21 | Clark and Cowlitz counties because the health plan contracts stated that Kaiser's service
22 | area is “certain geographic areas in the Northwest as designated by ZIP code.”
23 | Purchasing employers were not informed that the approved service area, as described in
24 | the approved Access Plan, was limited to Clark and Cowlitz counties. As a result,
25 | employers had offered these plans to individuals and families who neither lived, nor
26 | worked within the service area. *Id.*

 This discovery caused Ms. Kreitler significant concern. Kaiser's had
demonstrated network adequacy only in two counties – Clark and Cowlitz counties. *Id.*

 On May 26, 2015, Kaiser assured the OIC that only two large group plans had
been sold to employers located outside Clark and Cowlitz County: the Wahkiakum Plan,
and Bonneville Hotsprings Plan.

1 The OIC informed Kaiser that if they wished to continue covering those
2 enrollees, it could request to expand their identified service areas to add additional
3 counties. *Id.* The OIC also informed Kaiser that they could request a service area
4 limitation (e.g., using zip codes) if they could demonstrate good cause. *Id.* However
5 Kaiser did not pursue either of those options. Nor did Kaiser request a hearing to contest
6 the suspension of its health plan contracts.

7 Instead, on May 27, 2015, Kaiser formally advised the OIC that it would be
8 correcting the definition of service area in its health plan contracts as Clark and Cowlitz
9 counties, matching the Access Plan. As part of its promise to correct its health plan
10 contracts, Kaiser said that "...our forms will need to be updated but we will no longer
11 issue a policy to a policyholder located outside of Cowlitz or Clark County." Kaiser
12 corrected the definition of service area in all of its health plan contracts and provided the
13 corrected documentation to its customers.

14 On June 1, 2015, Kaiser renewed the Bonneville Hotsprings Resort large group
15 health plan, outside of Clark and Cowlitz counties. *Id.*

16 On August 3, 2015, Kaiser informed the OIC that the Washington Public
17 Employee Benefit Board (PEBB) plan was also sold to people who did not live or work
18 within Kaiser's service area of Clark and Cowlitz counties.

19 In response to these events, the OIC filed the Order to Cease and Desist.

20 III. ARGUMENT AND AUTHORITY

21 The issue of whether Kaiser improperly defined its service area using zip codes
22 is not properly before this tribunal because Kaiser did not timely appeal the April 1,
23 2015 decision of the OIC regarding service area definitions.

24 Compliance with a statutory filing deadline is a jurisdictional requirement.
25 *Snohomish County Fire Prot. Dist. No. 1 v. Wash. State Boundary Review Bd. For*
26 *Snohomish County*, 121 Wn. App. 73, 82, 87 P.3d 1187 (2004) *aff'd*, 155 Wn.2d 70,
117 P.3d 348 (2005). A mandatory filing period acts as a jurisdictional bar. *Graham*
Thrift Group, Inc. v. Pierce County, 75 Wn. App. 263, 267-268, 887 P.2d 228 (1994).

1 The Office of the Insurance Commissioner may hold a hearing for any purpose
2 within the scope of the code when a person (which includes an issuer) is aggrieved by
3 any act or order² of the OIC. RCW 48.04.010(b). Aggrieved parties must file a
4 request for hearing within ninety (90) days of disapproval. RCW 48.04.010(3).
5 Unless hearing is demanded within ninety (90) days, the right to such hearing shall
6 conclusively be deemed to have been waived. RCW 48.04.010(3).

7 On April 1, 2015, The OIC sent Kaiser and objection and notice of suspension,
8 informing Kaiser that it was not permitted to define service areas by zip code, that it
9 must correct the health plan contracts that erroneously stated this, and that the plans
10 were suspended until corrections were made.

11 As described by Ms. Kreidler, Kaiser fully understood that it had many options
12 in response to that decision. Kaiser could have elected to file a new plan with
13 expanded counties. Kaiser could have filed a request to use zip codes, showing good
14 cause why they should be able do so. Kaiser could have timely requested a hearing
15 pursuant RCW 48.04.010(3) any time before June 30, 2015.

16 Instead, Kaiser changed its health plan contracts to clarify that its service area is
17 Clark and Cowlitz counties only, accurately reflecting the law and it's approved
18 Access Plan. Months have passed since the disapproval of the Kaiser' health plan
19 contact filings, and the timeframe for requesting a hearing on the disapproval and
20 determination regarding Kaiser's service area ended on June 30, 2015.

21 The Cease and Desist order issued by the OIC simply enjoins the unlawful sale
22 of plans outside the service area Kaiser selected and filed with the OIC.

23 IV. CONCLUSION

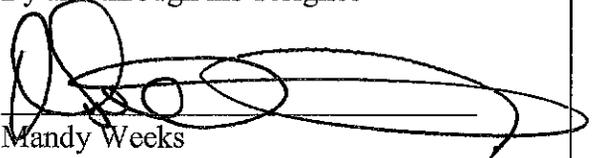
24 To the extent that Kaiser seeks to raise the issue of service area definitions and the
25 OIC's authority to direct it to define them by zip code at this time, it should not be

26 ² An "order" without further qualification, means a written statement of
particular applicability that finally determines the legal rights, duties, privileges,
immunities, or other legal interests of a specific person or persons.

1 heard. Based on the foregoing, the OIC requests an order limiting the issues in this
2 case to those properly raised by Kaiser's appeal of the Cease and Desist order: whether
3 Kaiser has shown cause why the order should be stayed.

4 DATED this 30th day of October, 2015.

6 MIKE KREIDLER
7 Insurance Commissioner
8 By and through his designee

9 
10 Mandy Weeks
11 Insurance Enforcement Specialist
12 Legal Affairs Division

CERTIFICATE OF MAILING

1
2 The undersigned certifies under the penalty of perjury under the laws of the State
3 of Washington that I am now and at all times herein mentioned, a citizen of the United
4 States, a resident of the State of Washington, over the age of eighteen years, not a party to
5 or interested in the above-entitled action, and competent to be a witness herein.

6 On the date given below I caused to be served the foregoing OIC'S MOTION IN
7 LIMINE TO CLARIFY ISSUES FOR HEARING on the following individuals in the
8 manner indicated:

9 **Via US Mail and Email**

10 Robin Larmer
11 STOEL RIVES LLP
12 600 University Street, Suite 3600
13 Seattle, WA 98101
14 robin.larmer@stoel.com

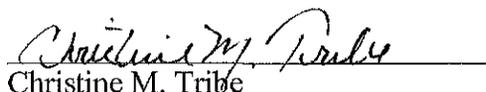
15 **Via US Mail and Email**

16 Kaiser Foundation Health Plan of the Northwest
17 500 NE Multnomah St Suite 100
18 Portland, OR 97232-5398
19 Maryann.X.Schwab@kp.org

20 **Via Hand Delivery and Email**

21 OIC Hearings Unit
22 Attn: William Pardee, Presiding Hearings Officer
23 Washington State Insurance Commissioner
24 5000 Capitol Blvd
25 Tumwater, WA 98501
26 hearings@oic.wa.gov

SIGNED this 30th day of October, 2015, at Tumwater, Washington.


Christine M. Tribe