

FILED

**BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER** 2016 APR 12 P 12:00

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

In the Matter of

The Form A Application for the Proposed
Acquisition of Control of:

**GROUP HEALTH COOPERATIVE
and GROUP HEALTH OPTIONS,
INC.,**

By

**KAISER FOUNDATION HEALTH
PLAN OF WASHINGTON**

Docket No. 16-0050

OIC POSITION ON HOLDING
CONSOLIDATED HEARING

The Insurance Commissioner for the state of Washington ("OIC"), by and through the undersigned Insurance Enforcement Specialist, his authorized designee, submits this statement in response to Kaiser Foundation Health Plan of Washington ("Kaiser")'s request to amend the First Order-Case Management Order entered by the Special Master in this matter. In that Order, the Insurance Commissioner, as presiding officer, ordered that representatives of the parties to the proposed merger ("the Companies") and the OIC provide testimony on the applicable elements of RCW 48.31B.015(4) and RCW 48.31B.020. However, at a telephonic status conference on April 4, 2016, Kaiser requested that the "Form E" elements of this case not be included in the hearing scheduled in this matter. The OIC's position is that the First Order was correct, and thus the following analysis will be brief.

Forms A and E "are intended to be guides in the preparation of the statements required by RCW 48.31B.015, 48.31B.020, 48.31B.025, and 48.31B.030." WAC 284-18-300(1). "A person required to file a statement under RCW 48.31B.015" must file both a Form A and

1 Form E. WAC 284-18-360. A domestic insurer, including any person controlling a domestic
2 insurer, proposing a merger or acquisition under RCW 48.31B.015 (1)(a) must file a Form E.
3 WAC 284-18-385. The Form E itself requires identification of persons involved in a pending
4 acquisition or change in corporate control, their affiliates, and the nature and purpose of the
5 acquisition, for example. WAC 284-18-950. In particular, the Form E requires the filer to
6 provide “a determination as to whether the proposed acquisition or merger, if consummated,
7 would violate the competitive standards of this state as stated in RCW 48.31B.020(4),”
8 including “historical market and market share data.” *Id.*

10 The Insurance Commissioner “shall approve a merger or other acquisition of control ...
11 unless, after a public hearing thereon, he or she finds that” one of the six circumstances
12 enumerated in that subsection exist. RCW 48.31B.015(4)(a) (emphasis added). One of the six
13 factors that the Commissioner is required to consider is whether the “effect of the merger or
14 other acquisition of control would be substantially to lessen competition in insurance in this
15 state or tend to create a monopoly therein.” RCW 48.31B.015(4)(a)(ii). In conducting this
16 analysis, the “informational requirements of RCW 48.31B.020(3)(a) and the standards of RCW
17 48.31B.020(4)(b) apply.” RCW 48.31B.015(4)(a)(ii)(A). Therefore, to complete the public
18 hearing required by RCW 48.31B.015(4)(a), the parties must provide testimony and evidence
19 that meets the requirements of RCW 48.31B.020(3)(a) and RCW 48.31B.020(4)(b). This
20 includes information, such as anticompetitive impact and market share data, contained in the
21 Form E submission. WAC 284-18-950; *see* RCW 48.31B.020(4)(b); RCW 48.31B.020(3)(a).

24 For these reasons the OIC maintains that the First Order correctly stated the scope of the
25 hearing in this matter, as required by RCW 48.31B.015(4)(a). The OIC respectfully requests
26

1 that the Special Master not exclude the statutorily-required factors found in RCW
2 48.31B.020(3)-(4) from the scope of the hearing.

3
4 RESPECTFULLY SUBMITTED this 12th day of April, 2016.

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7 MIKE KREIDLER
8 Insurance Commissioner

9 By and through his designee

10 

11 Darryl E. Colman
12 Insurance Enforcement Specialist
13 Legal Affairs Division

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2 CERTIFICATE OF MAILING

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

7 On the date given below I caused to be served the foregoing OIC POSITION ON
8 HOLDING CONSOLIDATED HEARING on the following individuals by hand delivery,
9 email and by placing same in the U.S. mail, via state Consolidated Mail Services as indicated
10 below:

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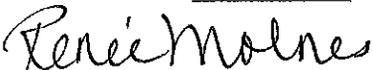
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27 SIGNED this 12th day of April, 2016, at Tumwater, Washington.

28 

29 RENE E MOLNES
30 Paralegal
31 Legal Affairs