

**Office of the Insurance Commissioner  
Washington**

**Kaiser Foundation Health Plan of Washington Form A Filing to  
Acquire Group Health Cooperative**

**Form A Filing Report**

**October 26, 2016**



Results...Relationship...Commitment

EXHIBIT OIC-1

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October 26, 2016

Mr. Douglas Hartz  
Deputy Insurance Commissioner  
Company Supervision Division  
Washington Office of the Insurance Commissioner  
Insurance 5000 Building, P.O. Box 40255  
Olympia, WA 98504-0255

Mr. Hartz:

Thank you for this opportunity to assist the Washington Office of the Insurance Commissioner (OIC) with the review of the Form A Filing submitted by Kaiser Foundation Health Plan of Washington to acquire Group Health Cooperative. Enclosed please find Risk & Regulatory Consulting's evaluation of that filing. In performing our evaluation, we considered the filing's compliance with Washington statutes RCW 48.31B.015 and RCW 48.31B.020 as well as the NAIC Best Practices for Form A Reviews.

Our report includes a detailed analysis of the executive summary of our review presented below. The executive summary is presented in sections that correspond with the format of our report.

<u>Section</u>	<u>Summary</u>
Legal Analysis	RRC did not perform a legal review or analysis of this proposed transaction. The State of Washington is performing a legal review of the proposed transaction.
Financial Condition	Kaiser Foundation Health Plan of Washington (KFHPW) did not provide a copy of an audited financial statement. This is in conflict with RCW 48.31B.015 (2)(a) which requires fully audited financial information for the preceding five years or such lesser period as the acquiring party has been in existence. The Certificate of Good Standing submitted by KFHPW in connection with this application has a date of incorporation of 5/1/1942. We note that the ultimate controlling company in this proposed transaction has an overall good financial trend.
Trustworthiness	There are no indications in the materials submitted indicating a lack of trustworthiness on the part of officers or directors.
Plan of Operations	KFHPW indicated that it has no current plans to declare any extraordinary dividends, liquidate GHC, sell GHC's assets outside

the ordinary course of business, or merge GHC with any third party. KFHPW also indicated that it has no current intention to make material changes in the business operations, corporate structure and will continue to write insurance policies in the current line of business. Further, that the expertise of Group Health physicians and employees will be integral to the continued delivery of excellent care. As such, the transaction is not anticipated to result in significant job loss.

Source of Funding for the Acquisition

The Acquisition Agreement provides for a transfer by KFHPW to Group Health Community Foundation (GHCF), at closing, of an amount equal to \$1.8 billion, as transaction consideration. The transaction consideration will be reduced by that portion of the transaction consideration representing refundable membership dues previously paid by Voting Members to GHC (estimated at approximately \$1.2 million), which will be deposited with a paying agent prior to closing. After closing, this subset of members may elect to be refunded \$175 of their membership dues or to donate that amount to the Group Health Foundation (GHF) (which after closing will be controlled by GHCF). Also, \$75 million of the transaction consideration will initially be deposited into an escrow account and held by a third party pursuant to an Escrow Agreement to satisfy potential claims for indemnification made by KFHPW for up to fifteen months after closing. The escrow balance remaining after the end of this escrow period will be transferred to GHCF. The source of funding appears to be adequate.

Fairness of Consideration

In the Acquisition Agreement, Section Authority 3.2 (c) states, "The Company (GHC) has received the opinion of Evercore Group LLC, the Company's financial advisor, to the effect that the Purchase Price (as reduced by the Aggregate Members Capital Dues) to be paid by the Buyer (KFHPW) to New Foundation (GHCF) is fair to the Company (GHC) from a financial point of view. Due to the financial relationship between Evercore Group LLC (Evercore) and GHC, certain disclosures made by Evercore regarding the payment of fees and future business relationships, the fairness opinion provided by Evercore does not appear to be independent and it may not be prudent to rely upon the opinion for purposes of this acquisition.

Effect on Competition

An economic opinion from Monica G Noether of Charles River Associates was obtained and submitted to the OIC. The opinion stated that the proposed acquisition would not lead to a substantial reduction in competition, and that there was no evidence of a significant trend towards increased concentration. The opinion concluded that the acquisition was in the best interest of consumers.

Potential Hazard to Policyholders

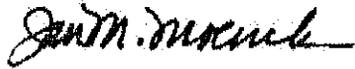
Three public hearings were held. Mitigating factors were identified to alleviate all concerns identified except those relative to the fairness opinion.

We believe the applicants submitted documentation for the proposed transaction which may make the proposed transaction approvable by the Commissioner; however, suggest the following matters be considered in any order approving the proposed transaction:

- The submission of audited financial information for the acquiring party which satisfies the requirements of RCW 48.31B.015 (2)(a).
- We recommend the creation and maintenance of the Consumer Advisory Committee and the GHC Senior Caucus since these were concerns raised in the hearings held by the commissioner.
- Kaiser Foundation Hospitals (KFH) and Kaiser Foundation Health Plan (KFHP), Inc. have entered into a guaranty agreement under which they guarantee all of the liabilities, debts and obligations of each other and substantially all of the liabilities, debts and obligations of Kaiser Foundation Health Plan of Northwest, Kaiser Foundation Health Plan of Georgia, Inc., Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Kaiser Foundation Health Plan of Colorado (Affiliated Health Plans). Under the guaranty agreement, only KFH and KFHP are guarantors and only KFH and KFHP and the Affiliated Health Plans are covered under the guaranty agreement. We recommend that GHC becomes a party of the guaranty agreement in a manner similar to the other Affiliated Health Plans.
- In the Statement of Operations for years 2017 through 2019 there is an incremental cost for Additional Community Benefits and this represents the increased Community Benefit commitment of the \$800 million over the next 10 years, all of which will be funded by the Group Health Cooperative's (GHC) balance sheet and cash flows. We recommend that the OIC put in place a capped amount of annual expenditures as they relate to the \$1 billion commitment over the next 10 years for capital expenditures and the \$800 million commitment over the next 10 years for community benefits. Any amount in excess of the cap would be required to be approved by OIC prior to exceeding the cap.
- The applicant indicated that decisions regarding intercompany agreements have not been made. We recommend that the OIC approve any intercompany or service agreements prior to the commencement date of these contracts.
- We recommend a stipulation that the board governance committee will not adjust criteria that board candidates must meet in order to fill any vacant seats for a specified period of time following any approval of the acquisition.
- As of September 1, 2016 there has been a selection of two officers for the GHC post acquisition period. We recommend that Kaiser identify the remaining officers and have them submit biographical affidavits and third party backgrounds checks or stipulate in an order that this documentation must be received and reviewed prior to commencing any business.
- We recommend that a stipulation be put in place that payments in excess of a certain threshold for capital improvements or community charitable contributions and repayment of the \$2 billion Demand Note or Accrued Interest are approved in writing by the OIC prior to payment.
- The disclosures provided within the fairness opinion submitted in connection with this transaction call into question the independence of that opinion. In order to resolve any questions as to the fairness of the proposed transaction, we recommend the Commissioner consider requiring a second fairness opinion from an independent party.

Please feel free to contact Jan Moenck at 612-868-9839, Wayne Johnson at 850-363-4853, or Karen Heburn at 813-356-8066 for further discussion of this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jan M. Moenck". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jan M. Moenck, CFE  
Partner, Risk & Regulatory Consulting

## Overview of the Analysis Process Utilized by Risk & Regulatory Consulting, LLC (RRC):

The following steps were taken to review the Kaiser Foundation Health Plan of Washington Form A Filing to acquire Group Health Cooperative:

- Review the documentation submitted by the applicant.
- Request further information from the applicant if the documentation provided as compared to statutory requirements, National Association of Insurance Commissioners (NAIC) and specific instructions from the Office of the Insurance Commissioner outlined below indicate deficiencies or generates questions:
  - Statute RCW 48.31B.015
  - Statute RCW 48.31B.020
  - Proposed NAIC Best Practices for Form A Reviews
  - Request for Proposal
- Review the follow-up documentation provided by the applicant and once satisfied with the responses prepare several analysis:
  - Officer and Directors – compare information in the submitted documents to the statutory requirements
  - Financial Dashboard – review historical and projected financial data
  - Cash Flow Diagram - show the movement of consideration for the acquisition transaction
  - Public Hearings – track speakers comments and identify whether there are sufficient mitigating factors outlined in the documentation supplied by the applicant to address any concerns expressed during the hearings
- Prepare a report for the OIC outlining any concerns and make recommendations for resolutions or denial.

Report as of October 26, 2016

Submitted by: Karen Heburn

## Section I Background

### Kaiser Foundation Health Plan of Washington to Acquire Group Health Cooperative

Kaiser Foundation Health Plan of Washington (KFHPW), a Washington non-profit corporation submitted a Form A filing with the State of Washington on February 26, 2016 to acquire Group Health Cooperative (GHC). KFHPW is a Washington non-profit corporation that currently has no operations. KFHPW's parent organization, Kaiser Foundation Health Plan, Inc. (KFHP), is a California non-profit public benefit corporation and health care services plan that was founded in 1945. Together with Kaiser Foundation Hospitals (KFH), a California non-profit public benefit corporation, and the independent and exclusively contracted Permanente Medical Groups, KFHP and its subsidiary health plan entities operate what is known as the "Kaiser Permanente Medical Care Program" (or together "Kaiser Permanente"). Kaiser Permanente is an integrated health care delivery system with over 10 million members enrolled in its commercial, Medicare and Medicaid lines of business. Kaiser Permanente owns and directly operates 38 hospitals, 621 clinics and outpatient facilities. The Permanente Medical Groups employ approximately 18,000 physicians.

GHC, a Washington non-profit corporation based in Seattle, Washington and is a health maintenance organization that was founded in 1947. GHC and its subsidiary health plans, also known as Group Health serves almost 600,000 residents of Washington and Northern Idaho. On December 1, 2015 at a combined meeting of the boards of directors of KHFPW, KFHP and KFH, the board of directors of KHFPW authorized and approved the terms and conditions of the proposed acquisition of GHC and all actions taken in connection with the loan by KFH to KHFPW of the funds necessary to close the acquisition. The documents submitted to OIC indicate that a quorum of the KHFPW board of directors were present at the meeting. As a non-profit corporation, GHC does not issue stock or other instruments that would convey an equity ownership interest in GHC. Instead, GHC's bylaws generally vest governing authority in a board of trustees. In addition, GHC has individual enrolled participants or members who have taken steps to become voting members of GHC. The GHC bylaws describe the rights of GHC voting members including rights regarding GHC trustee elections, approval of amendments to certain bylaw provisions and approval regarding extraordinary actions by GHC. In order to implement the provisions of the Acquisition Agreement **requiring** voting member approval, the GHC eligible voting members must approve a plan of member substitution with KHFPW by at least two-thirds (2/3rds) of the eligible Voting Members who cast votes.

Subject to the satisfaction of certain conditions to closing, including approval by the various individual voting GHC members and the OIC, KHFPW proposes to become the sole corporate member of GHC and acquire control over GHC and its subsidiaries. In accordance with the terms of the Acquisition Agreement between KHFPW and GHC dated December 2, 2015, prior to the closing of the acquisition, Group Health Foundation (GHF) will be removed as a direct subsidiary of GHC and become a direct subsidiary of Group Health Community Foundation (GHCF), a newly formed Washington non-profit corporation. These two non-profit companies will be completely separate from the Group Health and Kaiser organizations. KHFPW will pay transaction consideration in the amount of \$1.8B to GHCF. The source of the funding will be provided internally from within the Kaiser organization.

According to the documents submitted, the fundamental purpose for creating GHCF is to assure that Washington residents will be served well into the future as intended by the founders of GHC. The transaction recommended by the Group Health Board asserts the following:

1. *"In addition to the new foundation Kaiser will strengthen the existing Group Health and its local, integrated system of care delivery and insurance coverage through commitments such as investing \$1B into Group Health operations over ten years and expectations of \$800M in community benefits delivered by the Group Health system over that same ten year period."*
2. *"The transaction will create and fund a new GHCF. This nonprofit will be entirely independent of Kaiser and exist solely to serve the community consistent with Group Health's purpose."*

Creation of a new foundation like GHCF is not uncommon and provides value in a transaction of this kind involving nonprofit, charitable organizations in health care. As the founding purpose of Group Health was to deliver, and ensure the delivery of, health care services, the purpose of GHCF is to address the charitable and social welfare needs of the residents of the state of Washington. Specifically focus will be on improving health and wellness. As outlined in the documents submitted, this organization intends to build on Group Health's legacy of service to all which was a concern voiced by several speakers during the hearings held in Tacoma, Seattle and Spokane.

There are a few other organizations around the country that do related work and have similar founding structures, but no other that is exactly the same. GHCF is unique in its intended purpose to support both health care services and determinants of health (such as education, nutrition, environment, family supports, and more) fueled by and in partnership with local communities here in Washington.

Here are a few examples of organizations with some similarities to how GHCF is structured:

California Health Care Foundation – <http://www.chcf.org/about>

The California Endowment – [www.calendow.org](http://www.calendow.org)

Missouri Foundation for Health – <https://www.mffh.org/>

Casey Family Programs – <http://www.casey.org/>

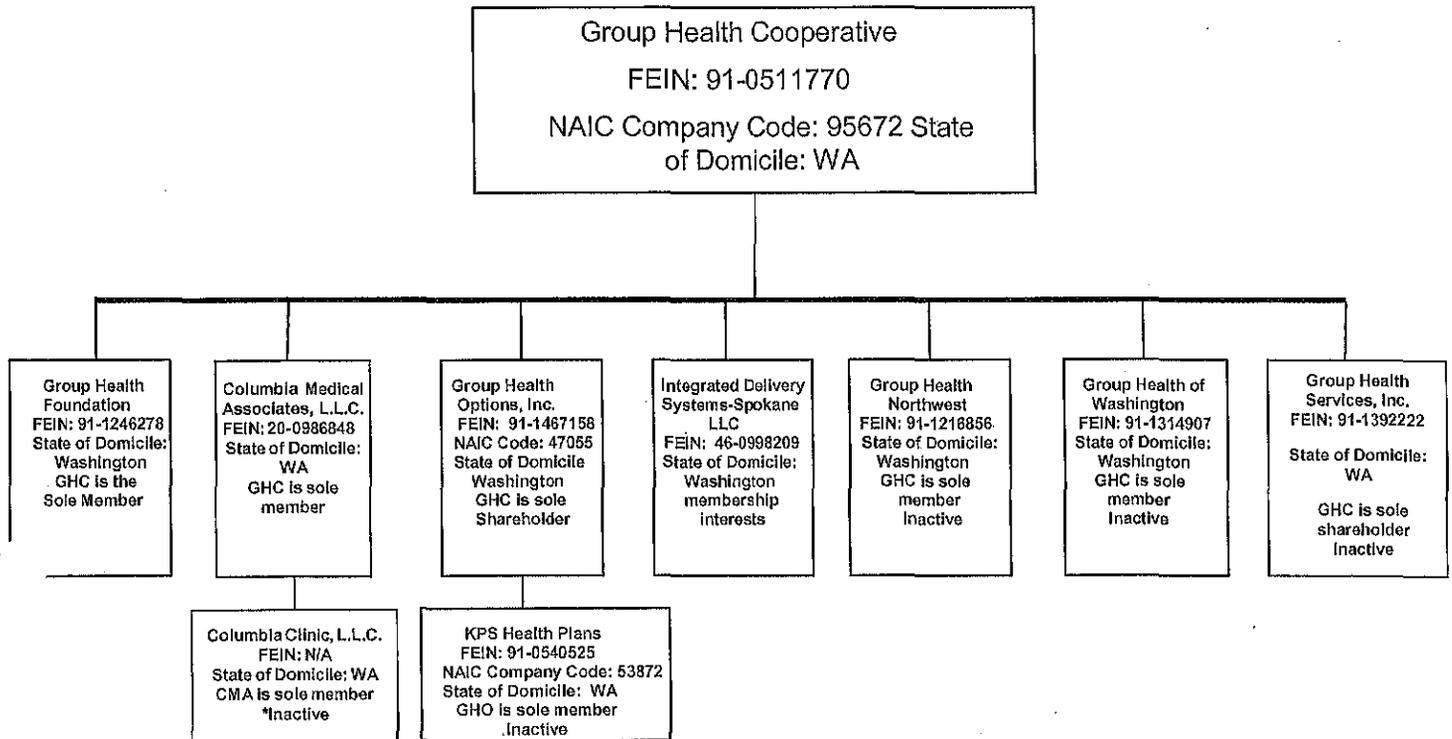
According to the documentation submitted, the active role that GHC voting members play in the operations of Group Health is part of what makes GHC such a strong community asset. While as part of the proposed transaction GHC voting members will lose their member voting rights with respect to GHC, this important involvement by and input from GHC members will continue in several respects after the closing. First, KFHPW will at closing appoint a board of directors for GHC that contains no less than one-third GHC enrolled participants or consumers who are substantially representative of the enrolled population of GHC. Second, KFHPW will adopt corporate bylaws at closing that require the creation of a Consumer Advisory Committee of at least 25 people to provide GHC's members with an opportunity to participate in matters of policy and operation, to promote the effective use of health care services within the organization, and to suggest ways that the organization can better serve its members and the community as a whole. Third, KFHPW will continue to recognize and engage with special interest groups formed by GHC members, including the group known as the "GHC Senior Caucus".

**We recommend the creation and maintenance of the Consumer Advisory Committee and the GHC Senior Caucus be stipulated in the order since these were concerns raised in the hearings held by the commissioner.**

## Organizational Charts – Group Health Cooperative

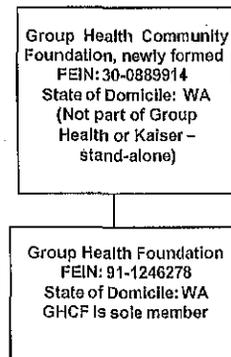
Organizational charts for the Group Health pre and post-acquisition are shown below:

### Pre-Transaction Organizational Chart



### Post-Transaction Organizational Chart

An organization chart for the Group Health Community Foundation post-acquisition is shown below:

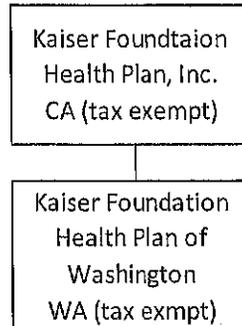


All of the officers of GHCF are former officers of GHC.

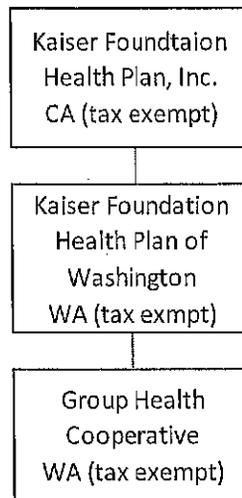
## Organizational Charts - Kaiser

Simplified organization charts for the Kaiser pre and post-acquisition are shown below:

### Pre-Transaction Organizational Chart



### Post-Transaction Organizational Chart



## Section 2 Legal Analysis

The OIC has indicated that they are performing a legal review on the following:

- Acquisition Agreement
- Articles of Incorporations and By-Laws for the entities involved in the acquisition: Group Health Cooperative, Kaiser Foundation Health Plan of Washington and Group Health Community Foundation

## Section 3 Financial Condition

### Authority:

Statute RCW 48.31B.015 (2)(a) requires:

*(2) The statement to be filed with the commissioner under this section must be made under oath or affirmation and must contain the following:*

*(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for such lesser period as the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.*

KFHPW is a holding company that had no financial activity prior to December 31, 2015 and is a successor to an inactive shell company that was within the KFHP organizational structure. The balance sheet of KFHPW contained investments offset by the Note for an Intercompany Loan of \$2B.

**KFHPW did not provide a copy of an audited financial statement and this does not satisfy the statutory requirement because KFHPW's Certificate of Good Standing has a date of incorporation of 5/1/1942.**

Below is a schedule of financial information from the parent company and ultimate controlling parent of Kaiser:

Kaiser Foundation Health Plan, Inc. and Subsidiaries and Kaiser Foundation Hospitals and Subsidiaries							
Audited Financials (In millions)							
Year	Assets	Liabilities	Net Worth	Revenues	Expenses	Net Income	Cash Provided by Operations
2010	\$42,849	\$29,961	\$12,888	\$44,227	\$42,236	\$1,991	\$4,061
2011	\$46,699	\$34,204	\$12,495	\$47,870	\$45,857	\$2,013	\$4,462
2012	\$52,813	\$38,529	\$14,284	\$50,631	\$48,035	\$2,596	\$4,063
2013	\$56,878	\$33,829	\$23,049	\$53,084	\$50,399	\$2,685	\$5,047
2014	\$61,915	\$41,088	\$20,827	\$56,433	\$53,360	\$3,073	\$5,388
2015	\$62,626	\$37,729	\$24,897	\$60,749	\$58,881	\$1,868	\$3,319

The ultimate controlling company has an overall good financial trend.

Kaiser Foundation Hospitals (KFH) and Kaiser Foundation Health Plan (KFHP), Inc. have entered into a guaranty agreement under which they guarantee all of the liabilities, debts and obligations of each other and substantially all of the liabilities, debts and obligations of Kaiser Foundation Health Plan of Northwest, Kaiser Foundation Health Plan of Georgia, Inc., Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Kaiser Foundation Health Plan of Colorado (Affiliated Health Plans). Under the guaranty agreement, only KFH and KFHP are guarantors and Only KHF

and KFHP and the Affiliated Health Plans are covered under the guaranty agreement. No assets of any party are pledged under the guaranty agreement. At this time, management has not decided whether GHC will be included as a party to the guaranty agreement. Below are the key financial components for the insurer's that reside within the Kaiser organization and in aggregate in 2015 and 2014 there were a net losses of (\$75.9M) and (\$134.8M), respectively. Historically there have been capital infusions for some of these insurers.

**We recommend that GHC becomes a party of the guaranty agreement.**

Below are the financial components of the insurer's currently in the Kaiser organization as of 12/31/2015 and 12/31/2014:

As of December 31, 2015							
Key Financial Data (in millions)	KFHP - Hawaii NAIC - 11538	KFHP - CO NAIC - 95669	KFHP - Mid Atlantic NAIC - 95639	KFHP - NW NAIC - 95540	KFHP - GA NAIC - 96237	KPIC NAIC - 60053	Total for Insurers
Admitted Assets	\$424.5	\$1,392.5	\$1,148.5	\$1,477.6	\$487.8	\$174.3	\$5,105.2
Liabilities	\$349.4	\$998.9	\$939.3	\$1,058.2	\$369.3	\$70.6	\$3,785.7
Capital & Surplus	\$75.1	\$393.6	\$209.2	\$419.3	\$118.5	\$103.7	\$1,319.4
Direct Premiums Written	\$1,235.4	\$3,191.3	\$2,925.8	\$3,168.2	\$1,285.1	\$126.2	\$11,932.0
Net Income	(\$17.4)	(\$17.0)	(\$5.1)	(\$13.5)	(\$30.1)	\$7.2	(\$75.9)
RBC Ratio	354.0	490.4	364.6	695.9	396.0	2,165.5	744.4

As of December 31, 2014							
Key Financial Data (in millions)	KFHP - Hawaii NAIC - 11538	KFHP - CO NAIC - 95669	KFHP - Mid Atlantic NAIC - 95639	KFHP - NW NAIC - 95540	KFHP - GA NAIC - 96237	KPIC NAIC - 60053	Total for Insurers
Admitted Assets	\$380.8	\$1,305.1	\$1,196.4	\$1,300.8	\$511.1	\$169.6	\$4,863.8
Liabilities	\$299.0	\$1,083.1	\$1,049.2	\$1,097.7	\$404.9	\$74.8	\$4,008.7
Capital & Surplus	\$81.7	\$221.0	\$147.2	\$203.2	\$106.2	\$94.8	\$854.1
Direct Premiums Written	\$1,172.6	\$3,115.3	\$2,580.6	\$2,994.1	\$1,168.6	\$141.2	\$11,172.4
Net Income	(\$2.1)	\$57.2	(\$12.3)	(\$15.6)	(\$170.2)	\$8.2	(\$134.8)
RBC Ratio	407.5	267.2	274.0	370.4	383.7	1,828.6	588.6

**Risk Based Capital Ratios:**

> 200% - no action suggested	< 200% a capital plan is required	Between 70% and 100%, the regulator has the option of taking control of the insurer	<70% the regulator is required to place the insurer under control
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**PROFORMAs Overview:**

Three year proformas of "Statements of Admitted Assets, Liabilities and Capital and Surplus" and "Statements of Operations" have been submitted for GHC for 2017 through 2019 on both a GAAP and Statutory basis of accounting.

Group Health Cooperative - GAAP							
Projections (In thousands)							
Year	Assets	Liabilities	Surplus	Revenues	Expenses	Incremental Costs*	Net Income
2017	\$1,811,312	\$867,976	\$943,336	\$3,644,000	\$3,557,000	\$86,000	\$1,000
2018	\$1,855,457	\$906,979	\$948,478	\$3,954,000	\$3,854,000	\$95,000	\$5,000
2019	\$1,916,768	\$947,312	\$969,456	\$4,287,000	\$4,166,000	\$99,000	\$22,000

Group Health Cooperative - Statutory							
Projections (In thousands)							
Year	Assets	Liabilities	Surplus	Revenues	Expenses	Incremental Costs*	Net Income
2017	\$1,724,360	\$886,070	\$838,290	\$3,455,421	\$3,368,833	\$86,000	\$588
2018	\$1,768,853	\$926,623	\$842,230	\$3,755,202	\$3,654,734	\$95,000	\$5,468
2019	\$1,829,884	\$868,622	\$961,262	\$4,076,777	\$3,954,751	\$99,000	\$23,026

\*Incremental Costs include: Transition Costs, Capacity and Capabilities, Additional Depreciation and Additional Benefits

**Financial Items of interest:**

1) Aggregate write-ins for Other Liabilities are \$303M annually and consist of:

- Reserves for Self-Insured Risks (\$58M)
- Unfunded Pension Liability (\$186M)
- Retiree Medical (\$59)

2) In the 12/31/2016 Statements of Admitted Assets, Liabilities, Capital and Surplus there is an amount for "Borrowed Money and Interest" in the amount of \$90M it represents long term debt (bonds and loans = \$99M) offset by Funds Held by Trustee (\$9M).

3) In the Statement of Operations for years 2017 through 2019 there is an incremental cost for Capacity and Capabilities ranging from \$41M to \$57M and this represents expenses for information technology investments to improve customer service and member experience, as well as improve capabilities in patient billing and revenue cycle, analytic capabilities, equipment upgrades, facility upgrades, marketing and rebranding expenses and hiring additional employees to support additional capabilities and services.

4) In the Statement of Operations for years 2017 through 2019 there is an incremental cost for Additional Depreciation and this is related to higher capital expenditures and it relates to the \$1B commitment over the next 10 years. This amount and the amounts listed in items 3 above will be attributable to capital investments in GHC.

5) In the Statement of Operations for years 2017 through 2019 there is an incremental cost for Additional Community Benefits and this represents the increased Community Benefit commitment of the \$800M over the next 10 years, all of which will be funded by the GHC's balance sheet and cash flows. The \$800M of Community Benefits will flow to GHCF.

We recommend that the OIC put in place a capped amount of annual expenditures as they relate to the \$1B commitment over the next 10 years for capital expenditures and the \$800M commitment over the next 10 years for community benefits. Any amount in excess of the cap could be required to be approved by OIC prior to exceeding the cap.

A request was made to provide agreements that were going to be entered in to as a result of the Acquisition Agreement if the Form A Filing was approved. The response was: "As with the services shared pursuant to existing intercompany agreements, decisions about any additional intercompany agreements that will be executed have not yet been made. We will ensure that any such agreements comply with Washington law and are timely filed."

We recommend that the OIC require approval of any intercompany or service agreements prior to the commencement date of these contracts.

When rate information was requested and actuarial support for the projected rate increase/decrease for the next year, 3 years and 5 years, KHFPW responded: "The 2017 rates were set by GHC independently. KHFPW's strategy is to deliver rate increases below the current Washington market levels. Decisions on 2018 pricing will be made in the first quarter of 2017."

## Section 4 Trustworthiness

### Authority:

Statute RCW 48.31B.015 (2)(a) requires:

*(2) The statement to be filed with the commissioner under this section must be made **under oath** or affirmation and must contain the following:*

*(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected, and referred to in this section as the acquiring party and:*

*(i) If that person is an individual, his or her principal occupation and all offices and **positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;** and*

*(ii) If that person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the person and any predecessors have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to those positions. The list must include for each such individual the information required by (a)(i) of this subsection*

For each of the listed Post-Acquisition officers and directors a biographical affidavit signed under oath and a third party background check with at least five years of principal occupation and all offices held along with a criminal check going back ten years was submitted for each individual. There are no indications in the materials submitted indicating a lack of trustworthiness on the part of officers or directors.

### GHC – Officers and Directors Pre-Acquisition

Name	Position
Scott Elliot Armstrong	President & CEO
Linda Marie Beard	Treasurer
Sarah Barian Yates	Secretary
Breton Clark Myers	Assistant Treasurer
Shawna Marie Sweeney	Assistant Secretary
Susan Joy Byington	Chair, Board of Trustees
Robert Alexander Watt	Vice Chair, Board of Trustees
Susan Joy Byington	Trustee
Phillip Jeffrey Haas	Trustee
Hugh Larrington Straley	Trustee
Katherine Bell	Trustee
Harry Harrison Jr	Trustee
Robert Alexander Watt	Trustee
Ruta Elma Fanning	Trustee
Dorothy Anne Ruzicki	Trustee
Michael David Wilson	Trustee
Leo Grancis Greenawalt Jr	Trustee
Judith Emily Schurke	Trustee

### GHC – Officers and Directors Post-Acquisition

Name	Position	Director Origin – A, B or C*
Susan Mullaney	President and Chief Executive Officer	N/A
Karen Schartman	EVP and Chief Financial Officer	N/A
Gregory A Adams	Director	(A) Officer of KFHP – Group President
Patrick T Courneya, MD	Director	(A) Officer of KFHP – Chief Medical Officer
Ruta Fanning	Director	(C) GHC Trustee, Seattle
Judith A Johansen	Director	(B) Director of KFHPW
Kim A Kaiser	Director	(B) Director of KFHPW
Susan Mullaney	Director	(A) Officer of KHFP – Group President
Margaret E. Porfido	Director	(B) Director of KFHPW
Constance Rice, PhD	Director	(C) GHC Enrolled Participant, Seattle
Michael D Wilson	Director	(C) GHC Trustee, Spokane

\*KFHPW will initially appoint a nine (9) member GHC board of directors, consisting of the following: (A) three officers, including the KFHP Group President that covers GHC operations (who will also serve as chairperson of the board), the KFHP Chief Financial Officer, and the KFHP Chief Medical Officer; (B) three directors also serving on the Applicant's board of directors; and (C) three GHC enrolled participants selected by KFHPW using certain criteria, including among other things:

- o Geographic representation, with ideally

- One individual from Seattle, one from Spokane and one from South Sound
- Experience/expertise
  - Understanding of health care needs/services (e.g., caring for vulnerable populations)
  - General knowledge of the operations of the Group Health Medical Care Program
  - Involvement in or with community organizations impacting the program
  - Understanding of regulatory requirements impacting the program
  - Understanding of the community and government expectations for non-profit health care organizations (e.g., federal tax exemption community benefit requirements)
- Independence
  - Not a Group Health employee (either GHC or GHP)
  - No vested interest in GHC's operations (financial or otherwise)

KFHPW's board governance committee will from time to time adjust criteria that board candidates must meet in order to fill any vacant seats, taking into consideration the skills of the then current board members and resulting gaps given the needs of the board and organization.

**We recommend a stipulation that for a specified period of time the board governance committee will not adjust criteria that board candidates must meet in order to fill any vacant seats.**

As of September 1, 2016 only two officers of GHC have been determined post transaction.

**We recommend that Kaiser identify the remaining officers and have them submit biographical affidavits and third party backgrounds checks or stipulate in an order that this documentation must be received and reviewed prior commencing any business.**

#### **GHCF – Officers and Directors Post-Acquisition**

Name	Position
Susan J Byington	Chairman
Robert A Watt	Vice Chairman
Diana Birkett Arokow	President
Ruta E Fanning	Treasurer
Sarah B Yates	Secretary
Susan J Byington	Director
Robert A Watt	Director
Porsche Everson	Director
Leo F. Greenawalt, Jr	Director
Ruta E Fanning	Director

All of the initial directors of GHCF also served as principals of GHC.

**KFHPW – Officers and Directors Post-Acquisition**

Name	Position
Kathy Lancaster	Executive Vice President & CEO
Thomas R Meier	SVP & Treasurer
Susan Mullaney	Regional President Designate
Arthur M Shoutham, MD	Exec Vice President, Health Plan Ops
Mark S Zemelman	SVP, Gen Counsel and Secretary
Hong-Sze Yu	Assistant Secretary
Bernard J Tyson	Chairman of the Board, President and CEO
Alfonse Upshaw	SVP, Corporate Controller and Chief Accounting Officer
Regina Benjamin	Director
Jeffrey Epstein	Director
Leslie Heisz(1)	Director
David Hoffmeister	Director
Judith Johansen	Director
Kim Kaiser	Director
Philip Marineau	Director
Edward Pei	Director
Margaret Porfido	Director
Richard Shannon	Director
Cynthia Telles	Director
Bernard Tyson	Director
Dr. A. Eugene Washington	Director

(1) In Ms. Heisz's biographical affidavit it was disclosed that she was involved in an ERISA lawsuit against IGT, members of its board of directors and the IGT Profit Sharing plan committee. Ms. Heisz is a retired from the investment banking industry and had held a license for Series 24 and other general securities principals with FINRA. The Lawsuit was filed in July of 2010 and a \$500,000 settlement was ordered and adjudged on June 26, 2013.

## KFHP – Officers and Directors Post-Acquisition

Name	Position
Gregory Adams	Exec VP & Group Pres, N CA & Mid-Atlantic States
Patrick Courneya, MD	Exec VP & Chief Medical Officer
Dick Daniels	Exec VP & Chief Information Officer
Kathy Lancaster	Exec VP & Chief Financial Officer
Thomas R Meier	Exec VP & Treasurer
Arthur M Shoutham, MD	Exec Vice President, Health Plan Ops
Mark S Zemelman	SVP, Gen Counsel and Secretary
Bernard J Tyson	Chairman of the Board, President and CEO
Alfonse Upshaw	SVP, Corporate Controller and Chief Accounting Officer
Hong-Sze Yu	Asst Secretary
Regina Benjamin	Director
Jeffrey Epstein	Director
Leslie Heisz	Director
David Hoffmeister	Director
Judith Johansen	Director
Kim Kaiser	Director
Philip Marineau	Director
Edward Pei	Director
Margaret Porfido	Director
Richard Shannon	Director
Cynthia Telles	Director
Bernard Tyson	Director
Dr. A. Eugene Washington	Director
Ramon Baez	Director

## Section 5 Plan of Operations

KFHPW asserted that it has no current plans to declare any extraordinary dividend, liquidate GHC, sell GHC's assets outside the ordinary course of business, or merge GHC with any third party. Further, that KFHPW also has no current intention to make material changes in the business operations, corporate structure and will continue to write in the current line of business.

According to the documents submitted, the Group Health tradition of providing health care to Washington consumers will not only continue, it will improve through the additional resources and capabilities Kaiser Permanente brings. Among other things, Kaiser Permanente intends to do the following:

- Preserve the non-profit mission and tax-exempt status of GHC.
- Invest \$1 billion in the aggregate in GHC during the first 10 years following the closing of the transaction for capital improvements and key investments in infrastructure and other improvements. Notably, Kaiser Permanente will bring its state-of-the art claims system to GHC. That system will greatly enhance GHC's ability to timely and accurately process claims without requiring substantial and ultimately redundant investments in a similar system by GHC. This investment will be borne from the profits of GHC.

- Invest \$800M to continue to operate GHC as a charitable organization, and related to that expects to make \$800 million in community benefit investments in GHC's service areas over this same 10 year period. This investment will be borne from the profits of GHC.
- Increase GHC membership and market share across all lines of business, driven by increased affordability, strong national account relationships, and national sales, marketing and service capabilities.
- Support an environment where GHC employees are valued and respected and in which they can thrive.

The organizational structure of existing Kaiser Regions has, for the most part, a similar design to that currently used by GHC. For example, KP Regions generally have the following executives and departments that report directly to the Regional President –Health Plan Operations, Quality, Clinical Operations, Compliance, Strategy, Finance, Marketing, External Relations, and Human Resources. In addition, Legal and Information Technology reside in each KP Region but report directly to National Leadership. Many of those direct reports to the Regional President have "communities of practice" that allow for enterprise-wide learning and consistency of practices across all KP Regions. The expertise of Group Health physicians and employees will be integral to the continued delivery of excellent care. As such, the transaction is not anticipated to result in significant job loss.

KFHPW has committed to honor and cause GHC to honor all current collective bargaining agreements of GHC and its subsidiaries. For all GHC employees who are not subject to collective bargaining agreements, KFHPW has committed to provide current employees with compensation and benefits equal or greater to the compensation and benefits being provided as of the closing of the transaction for a minimum period of nine months following Closing. In addition, KFHPW has committed to continue and honor all existing incentive, severance and retention arrangements between GHC and current and former employees, directors, or consultants for a minimum period of 18 months following closing of the transaction. KFHPW has committed to grant all current employees of GHC and its subsidiaries prior service credit for purposes of eligibility to participate, benefit accrual and vesting under KFHPW's benefit plans applicable to those employees.

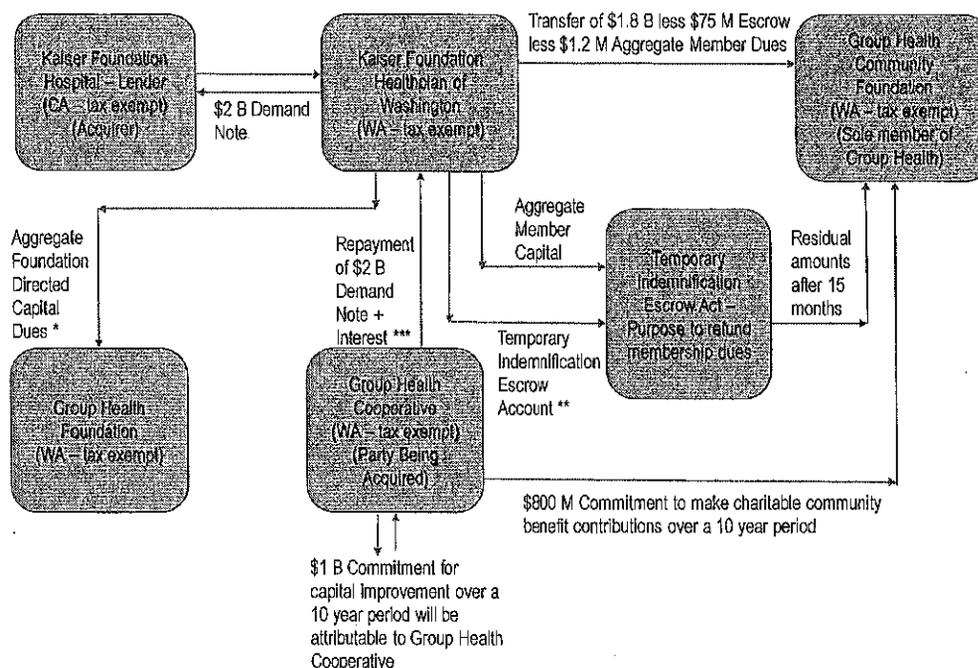
## **Section 6 Source of Funding for the Acquisition**

The Acquisition Agreement provides for a transfer by KFHPW to GHCF at Closing of an amount equal to \$1.8 billion, as transaction consideration.

The transaction consideration will be reduced by that portion of the transaction consideration representing refundable membership dues previously paid by Voting Members to GHC (estimated at approximately \$1.2 million), which will be deposited with a paying agent prior to closing. After closing, this subset of members may elect to be refunded \$175 of the membership dues or to donate that amount to the GHF (which after closing will be controlled by GHCF).

Also, \$75 million of the transaction consideration will initially be deposited into an escrow account and held by a third party pursuant to an Escrow Agreement to satisfy potential claims for indemnification made by KFHPW for up to fifteen months after closing. The escrow balance remaining after the end of this escrow period will be transferred to GHCF.

## Cash Flow Diagram



### Notes to the Cash Flow Diagram:

\***Aggregate Member Capital Dues** means the aggregate amount of capital contributions to the GHC, eligible for refund to the Members of the GHC upon termination of membership. The sum of Aggregate Member Owed Capital Dues (means the product of the number of eligible member who have elected to receive a refund of the per member capital dues upon termination of membership and b) the per member capital dues) and the Aggregate Foundation Directed Capital Dues (means the product of a) the number of eligible members who have elected to donate to GHF their per member capital dues upon termination of membership and b) the member capital dues).

\*\* At the time of closing KFHPW will put \$75M in Escrow for indemnification of for breach of the agreement or claims that arise against the foundation.

\*\*\* The **repayment of the \$2B Demand Note** plus accrued interest is anticipated to be paid through the net income generated by GHC. Interest is defined as the simple interest on the unpaid balance of the note from the date of the note until the principal balance is paid in full at yearly rate equal to the rate at which the proceeds hereof actually accrue interest (to the extent held in a deposit account) and realize investment income (to the extent held in a securities account). The interest on the note compounds annually.

**We recommend a stipulation that payments in excess of a certain threshold for capital improvements or community charitable contributions and repayment of the \$2B Demand Note or Accrued Interest are approved in writing by the OIC prior to payment.**

## Section 7 Fairness of Consideration

### Authority:

RW 48.31B.015

4(a) states, "(4)(a) The commissioner shall approve a merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing thereon, he or she finds that:

(4)(a)(iv) states, "The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

The Proposed NAIC Best Practices for Form A Review item 5a requirement is "Determine fairness (equivalency) of total amount to be paid to total value to be received, including derivation of price and value of target under standard valuation methodologies or to book value" and 5c, "consider fairness opinions , if provided."

### Excerpts from the Acquisition Agreement:

- In the Acquisition Agreement Section Authority 3.2 (c) states, "The Company (GHC) has received the opinion of Evercore Group LLC, the Company's financial advisor, to the effect that the Purchase Price (as reduced by the Aggregate Members Capital Dues) to be paid by the Buyer (KFHPW) to New Foundation is fair to the Company (GHC) from a financial point of view.
- In the Acquisition Agreement, Section 3.19 Brokers, states Except for Evercore Group LLC, the fees, commissions and expenses of which will be paid by the Company (GHC), no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Company (GHC).
- Evercore Group LLC was engaged by the GHC Trustees of Group Health Cooperative to express an opinion as to the fairness of the adjusted purchase price to be paid by Kaiser to GHCF in connection with the acquisition of GHC by KFHPW from a financial stand point.

In the opinion it states:

- *"We will receive a fee for our services upon the rendering of this opinion. The Company (GHC) has also agreed to reimburse our expenses and to indemnify us against certain liabilities arising out of our engagement. We will also be entitled to receive a success fee if the Transaction (\$1.8 purchase price reduced by the aggregate member capital dues of approximately \$1.2M) is consummated. During the two year period to the date hereof, no material relationship existed between Evercore Group LLP or any of its affiliates, on the one hand, and Kaiser (KFHPW) or any of its affiliates, on the other hand, pursuant to which compensation was received by Evercore Group LLP or its affiliates as a result of such a relationship. We provide financial or other services to Kaiser in the future and in connection with any such services we may receive compensation."*
- *"In the ordinary course of business, Evercore Group LLC or its affiliates may actively trade securities, or related derivative securities, or financial instruments of the Company (GHC), Kaiser (KFHPW) and their respective affiliates, for its own account and for the accounts of its customers and, accordingly, may at any time hold a long or short position in such securities or instruments."*

- *"Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Adjusted Purchase Price to be paid by Kaiser to New Foundation (GHCF) in connection with the Transaction is fair, from a financial point of view, to the Company (GHC)."*

The disclosures provided within the fairness opinion submitted in connection with this transaction call into question the independence of that opinion. In order to resolve any questions as to the fairness of the proposed transaction, we recommend the Commissioner consider requiring a second fairness opinion from an independent party.

## **Section 8 Effect on Competition Authority: RCW 48.31B.015 and RCW 48.31B.020**

A copy of the June 3, 2016 economic opinion from Monica G Noether of Charles River Associates who produced the "Expert Report of Monica Noether, PhD" as a result of performing an economic assessment of the competitive impact of its proposed acquisition of GHC following the approach outlined in the Washington Insurer Holding Act as well as that used by the federal antitrust agencies, the Department of Justice and the Federal Trade Act. Dr. Noether's opinion states,

- *"As I have discussed in this report, it is my opinion that the proposed acquisition of Group Health by Kaiser will not lead to a "sub substantial reduction in competition." Instead, the acquisition will bring "substantial economies of scale or economies in resource use that cannot feasibly be achieved in any other way," leading the Kaiser-Group Health combination to enhance market competition."*
- *"Moreover, there is no evidence of a "significant trend toward increased concentration." To the contrary, as indicated in paragraphs 53 and 54 and in Exhibits 4b and 5b, the trend is toward reduced concentration, as statewide concentration levels have fallen from being "highly concentrated" to below the threshold."*
- *"With the limited exception of the Medicare Advantage market in Lewis County, there is no prima facie violation of the competitive standard under RCW 48.31 B.020(i) and (ii). Even in Lewis County, residents have multiple competitive Medicare Advantage plan choices. Indeed, under the HMG framework, the acquisition raises no anticompetitive concerns in any market."*
- *"In summary, the acquisition "is in the best interests of consumers." The combined organization will increase the availability of insurance in Washington and provide vigorous competition by guaranteeing access for Washington consumers to cost-effective innovative products."*

## Section 9 Potential Hazard to Policyholders Authority: RCW 48.31B.020

The OIC held three Public Hearings as follows:

- Tacoma – 6/15/16
- Seattle – 6/29/16
- Spokane – 7/26/16

Hearing Location	For Acquisition	Against Acquisition	Neither For or Against	Total Speakers
Tacoma	12	0	1	13
Seattle	12	0	5	17
Spokane	7	0	3	10
Total	31	0	9	40
Percentage	78%	0%	23%	

There transcripts of the hearings did not identify any speaker comments or concerns that have not been addressed in this analysis.

Additionally, in the copy of the June 3, 2016 economic opinion from Monica G Noether of Charles River Associates who produced the "Expert Report of Monica Noether, PhD" as a result of performing an economic assessment of the competitive impact of its proposed acquisition of GHC following the approach outlined in the Washington Insurer Holding Act as well as that used by the federal antitrust agencies, the Department of Justice and the Federal Trust Act. Dr. Noether's opinion states,

- *"In summary, the acquisition "is in the best interests of consumers." The combined organization will increase the availability of insurance in Washington and provide vigorous competition by guaranteeing access for Washington consumers to cost-effective innovative products."*