

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

FILED

2016 MAR 10 P 1:11

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

HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

**FIRST ORDER: CASE  
MANAGEMENT ORDER**

1. Background. On March 1, 2016, Kaiser Foundation Health Plan of Washington (“Kaiser”), a Washington non-profit corporation that currently has no operations, filed an application, or Statement Regarding the Acquisition of Control of a Domestic Health Carrier and a Domestic Insurer (“Form A”), with the Office of the Insurance Commissioner (“OIC”). In the Form A, Kaiser seeks the OIC’s approval to acquire control of Group Health Cooperative (“GHC”) and its subsidiaries.

GHC is a Washington non-profit corporation and registered health maintenance organization founded in 1945. Among GHC’s subsidiaries, and included in the proposed transaction, is Group Health Options, Inc. (“GHO”), an insurance entity registered in the state of Washington. GHO is a health care service contractor wholly owned by GHC. GHO offers point of service and preferred provider organization (“PPO”) plans to individuals, and large and small employers. Together with the independent and exclusively contracted Group Health Permanente, P.C., GHC and GHO operate what is known as the “Group Health Medical Care Program”

(together "Group Health"). Group Health currently serves about 600,000 residents of Washington State and Northern Idaho.

Kaiser's parent company, Kaiser Foundation Health Plan, Inc. ("Parent"), is a California non-profit public benefit corporation and health care services plan, also founded in 1945. Together with Kaiser Foundation Hospitals, a California non-profit public benefit corporation, and the independent and exclusively contracted Permanente Medical Groups, Parent and its subsidiary health plan entities operate what is known as the "Kaiser Permanente Medical Care Program" (together "Kaiser Permanente"). Kaiser Permanente has over ten million members enrolled in its commercial, Medicare, and Medicaid lines of business. Kaiser Permanente owns and operates 38 hospitals and 621 clinics and outpatient facilities. The Permanente Medical Groups employ roughly 18,000 physicians.

If approved, the proposed transaction would permit Kaiser to become the sole corporate member of GHC, and thereby acquire control over GHC and its subsidiaries. Once Kaiser is the sole corporate member of GHC, Kaiser will immediately replace the existing GHC board of trustees with a board of directors it selects. Kaiser proposes to pay Group Health Community Foundation ("GHCF"), a newly formed Washington non-profit corporation, \$1.8 billion in consideration for the proposed transaction. Kaiser plans to use funds solely from within Kaiser Permanente to complete the transaction. Additional details on the proposal are contained in the Form A, which is available on the OIC's website at [www.insurance.wa.gov](http://www.insurance.wa.gov).

This First Order establishes certain procedures and deadlines that will govern the proceedings to review the Form A. **In particular, this Order establishes a deadline of April 8, 2016, by which time persons who wish to formally participate in the proceedings must file a petition to do so.** See Paragraphs 6 and 7 below. Subsequent case management orders will be

issued as necessary.

2. Adjudicative Hearing on Form A. The review of the Form A is governed by the Insurer Holding Company Act (“Act”), RCW Chapter 48.31B. RCW 48.31B.015(4)(b) requires the OIC to hold a public hearing within 30 days of the date that a Form A is filed, or by March 31, 2016. Therefore, for the *sole* purpose of meeting this statutory timeline I hereby *tentatively* schedule the hearing on the Form A in question for March 31, 2016, beginning at 9 a.m., Pacific Time, at the OIC, 5000 Capital Blvd., Tumwater, Washington, **but in issuing this order immediately adjourn such proceeding (i.e., cancel it)** pursuant to RCW 48.04.010(1)(a) (the Commissioner’s general authority to conduct hearings) and RCW 2.28.120, or other similar authority, in order to fulfill the scope of the requirements of the public hearing intended by RCW 48.31B.015(4)(b).

As explained more fully below, because the Form A presents questions of important public interest, the OIC will at a date to be set later and publicly announced, be holding a public adjudicative hearing to consider the matter and to receive evidence and testimony from Kaiser, Parent, GHC, GHO, the agency staff review team (“OIC Staff”), expert consultants, and any other person whose interest may be affected by the proposal.

RCW 48.31B.015(4)(b) specifically allows the parties and any person whose interest may be affected thereby to “present evidence, examine, and cross-examine witnesses, and offer oral and written arguments and in connection therewith are entitled to conduct discovery proceedings in the same manner as is presently allowed in the superior court of this state.” More time is needed to conduct discovery in this matter, for the OIC to review the Form A, to identify those persons whose interest may be affected by the proposed transaction underlying the Form A, and for the OIC Staff, the parties, and others to present evidence.

RCW 48.31B.015(4)(b) also requires that the Commissioner issue a ruling on the Form A within the sixty-day period preceding the effective date of the proposed transaction. However, per the Acquisition Agreement between GHC, Kaiser, and GHCF, the effective date of the proposed transaction is only triggered upon the OIC's approval of it, so this timeframe is not a concern.

The Act specifies that the hearing held by the Commissioner in connection with his review of the Form A shall be conducted as an adjudicative proceeding, resulting in a final administrative order. *See* RCW 48.31B.070 and the Administrative Procedure Act ("APA"), RCW Chapter 34.05. The parties to the proceeding are Kaiser, Parent, GHC, GHO, and the OIC Staff. The position and recommendations of the OIC will be presented to the Commissioner during the proceedings by OIC Staff, who will have the assistance of various expert consultants. In addition, those persons whose interest may be affected by the proposed transaction underlying the Form A will be given the right to participate in the proceedings. Such persons will be permitted to present evidence, examine witnesses, and conduct discovery. *See* RCW 48.31B.015(4)(b).

3. The Standard by which Kaiser's Form A is Analyzed. As to the Form A, at least one authorized representative of Kaiser and/or Parent (officers, directors, or in-house counsel are acceptable) and the OIC Staff shall testify as to the criteria set forth in 48.31B.015(4)(a), which provides that the OIC shall approve a merger or acquisition of control, unless after a public hearing thereon, the OIC finds that:

(i) After the change of control, the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein. In applying the competitive standard in this subsection (4)(a)(ii):

(A) The informational requirements of RCW 48.31B.020(3)(a) and the standards of RCW 48.31B.020(4)(b) apply;

(B) The merger or other acquisition may not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by RCW 48.31B.020(4)(c) exist; and

(C) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) 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;

(v) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vi) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

In addition, at least one authorized representative of both Kaiser and/or Parent (officers, directors, or in-house counsel are acceptable) and the OIC Staff shall testify as to the criteria set forth in 48.31B.020(4)(a), which provides that the OIC shall approve an acquisition if there is not substantial evidence that the effect of the acquisition may substantially lessen competition in a line of insurance in this state or tend to create a monopoly therein, and the insurer does not fail to file adequate information under RCW 48.31B.020(3). In determining whether the proposed acquisition violates this competitive standard, the OIC shall consider the criteria in RCW 48.31B.020(4)(b). RCW 48.31B.020(4)(c) requires that the OIC not deny such an acquisition if (1) the acquisition will yield substantial economies of scale or economies in resource that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition; or (2) the acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.

Finally, authorized representatives of Kaiser and/or Parent, GHC, GHO, and the OIC Staff shall also testify as to whether, or any employees, officers or directors, or other affiliates, have

received comments, complaints or concerns concerning the proposed acquisitions at issue in the Form A, and the nature and source.

4. Appointment of Special Master. Both the planning for the adjudicative hearing before the OIC on the Form A, and the preliminary legal issues that will arise and need to be addressed prior to the hearing, require that someone with legal expertise in administrative proceedings handle such matters (i.e., a so-called “Special Master”). The main purpose of appointing a Special Master is to promote prompt decision-making by having an arbiter readily available to resolve any disputes. Consistent with these purposes, the Special Master and the Commissioner, or his advisors if the Commissioner so delegates, may consult with each other at any time.

Washington Administrative Code (WAC) 284-02-070, which governs administrative hearings before the OIC states in part: “Provisions applicable to adjudicative proceedings are contained in chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act, and chapter 10.08 WAC.”

Given his experience with these provisions, and the Commissioner’s authority to do so under RCW 48.02.100, the Commissioner designates William G. Pardee, Presiding Officer in the OIC’s Hearings Unit, as Special Master to handle preliminary matters concerning the adjudicative proceeding, including but not limited to: Conducting prehearings and/or conferences; ruling on motions, discovery, and evidentiary issues; and handling issues that arise during adjudicative proceedings. That said, the Commissioner retains his role as the presiding officer under RCW 34.05.461(1)(a), and will enter a final order in these proceedings following the adjudicative hearing in this matter.

Consistent with the general requirements of the APA, the Special Master has wide latitude

to establish the procedures for the conduct of the proceedings. The Special Master will issue case management orders as necessary that set forth the procedures and deadlines for the proceedings. See RCW 34.05.434, .437, .446, and .449. The orders will address such issues as timing for the preparation of expert reports, discovery schedules, protective orders, dates to submit pre-filed testimony, and dates for the formal adjudicative hearing. *Id.* At the formal hearing, which will be public, documentary evidence and testimony will be presented regarding the merits of the Form A in question. RCW 34.05.449 and 452. Witnesses will testify under oath and may be examined by the parties and intervenors, or their representatives, and the Commissioner. *Id.* The hearing will be recorded and transcribed, and the transcript and all documentary evidence submitted by the parties and intervenors will be made a part of the administrative record. RCW 34.05.476. The Special Master will regulate the course of the proceedings; therefore, consistent with applicable administrative rules, he may direct the parties and intervenors to address certain issues or provide additional information, or he may call witnesses. See RCW 34.05.449. In accordance with the process and standards of review established under administrative law, the Commissioner's final decision following the adjudicative proceeding is subject to judicial review on the record. See RCW 34.05.570.

5. Screening Protocol in Place.

Because the review of the Form A is ultimately adjudicative, there shall be a separation of functions within the OIC. See RCW 34.05.458. For this reason, except for communications necessary to procedural aspects of maintaining an orderly process, the Commissioner, Special Master, and his advisors may not have *ex parte* communications with the parties. See RCW 34.05.455. Therefore any written communications to the Commissioner or Special Master from a party or intervenor regarding any issue raised by the Form A must be copied on all other parties

and intervenors, and any verbal communications to the Commissioner or Special Master from a party or intervenor regarding any issue raised by the Form A must be made at a time when all parties and intervenors have an opportunity to be present. The Commissioner has already identified those persons who will assist and advise him in his decision-making role and has informed agency staff of the prohibition against *ex parte* communications with these individuals on the merits of the Form A via issuance of a Screening Protocol.

6. Intervenors in the Adjudicative Proceeding. Those persons whose interest may be affected by the proposed transaction underlying the Form A may participate in the adjudicative proceedings. Such participants may present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith conduct discovery proceedings in the same manner as is allowed in the superior courts of this state. RCW 48.31B.015(4)(b). Persons who are permitted to participate in the proceeding not only have rights but also obligations and responsibilities. These responsibilities include, but are not limited to, the following: (1) being subject to discovery and obligated to respond timely to discovery requests; (2) being subject to examination and cross-examination; (3) being required to attend, in person or by counsel, conferences and hearings scheduled by the Special Master; and (4) being subject to all orders of the Commissioner and Special Master, which may include orders regarding deadlines, protection of confidential documents and information, and the service and filing of pleadings.

**April 8, 2016, is the deadline for all other persons to file a petition to participate in these proceedings.** The petition shall set forth a statement of facts, including relevant evidence if any, demonstrating that the petitioner is a person whose interest may be affected by the proposed transaction underlying the Form A. The petition shall be supported by applicable law and argument that explains with particularity the basis for the request to participate. The petition shall



be served on the Special Master in the manner described in paragraph 7 of this Order and a copy served on all those persons listed on the attached Certificate of Service.

On or before April 22, 2016, **the OIC Staff, Kaiser and/or Parent, and GHC shall each file a single pleading responsive to all such petitions.** On or before April 29, 2016, **the Petitioners may each file a single pleading in reply.**

The Special Master shall issue a written ruling on the petitions thereafter. The ruling may contain conditions on an intervenor's participation, such as: (1) limiting an intervenor's participation to designated issues in which the intervenor has established an interest; (2) limiting an intervenor's use of discovery, cross-examination and other procedures so as to promote an orderly and efficient proceeding; and (3) requiring two or more intervenors to combine their presentations of evidence and argument, examination of witnesses, discovery, and other participation in the proceeding.

7. Filing and Service of Pleadings and Other Papers. All paper pleadings, letters and other documents containing original text that are submitted to the Commissioner and Special Master shall be on 8-1/2x11 paper, sequentially numbered, and hole-punched so that the document can be inserted into a 3-ring binder. The type shall be double-spaced, and the text and footnotes shall be 12-point or larger in Times New Roman or equivalent serif font. The margins shall be at least 1 inch. The caption and docket number shall be referenced on the front of the document.

All paper pleadings, including briefs, memoranda, and motions, shall be accompanied by an electronic copy as a Word document or PDF file so that the document may be included on the OIC website.

Unless otherwise authorized, every person filing pleadings, letters, and other documents in this proceeding shall submit the original and an electronic copy to the attention of the Hearings

Unit Paralegal, Dorothy Seabourne-Taylor, via U.S. Mail at PO Box 40255, Olympia, WA 98504-0255, via personal delivery at 500 Capitol Boulevard, Tumwater, Washington 98501, via facsimile at (360) 664-2782, or via e-mail at DorothyS@oic.wa.gov.

Each party or intervenor shall serve each and every other party and intervenor with a copy of any document submitted to the Commissioner or Special Master.

If a document contains confidential proprietary, trade secret, or other non-public information, each and every page in which such information is contained must be conspicuously marked confidential. In addition, a cover letter shall be submitted with such document identifying the portions of the document that are confidential and the specific reasons for confidentiality. Every effort should be made to segregate nonpublic information from public information so that public information is readily disclosable upon request and on the OIC website. To achieve this, the duly authorized representatives of the parties or participants in this matter shall file with the OIC's Hearings Unit their legal position with respect to what working papers, documents, materials, or information involved with the Form A at issue they deem to be confidential under RCW 48.31B.038(1), RCW 48.02.065(6), RCW 48.31B.020(3), and if not confidential, should be sealed or redacted pursuant to Washington General Rules 15(c) and 31(e), and the *Ishikawa* factors outlined in *State v. Waldon*, 148 Wn. App. 952, 958, 202 P.3d 325 (2009). Following the parties' submission(s), without oral argument, and if deemed necessary, the Special Master will issue a written ruling on what documents will be deemed confidential, or redacted or sealed. Any documents not deemed confidential or sealed (in either redacted or un-redacted form) will be posted on the OIC's website.

8. Submission of the Application into the Administrative Record. Assuming that the Form A is not deemed to be confidential, or subject to redaction or sealing, per a ruling by the

Special Master under Paragraph 7 above, the OIC Staff shall promptly provide for inclusion in the administrative record one paper copy of the Form A filed with the OIC on March 1, 2016, and any supplements thereto. The Application and any future supplements need not be served on the other party. The documents should be provided to Dorothy Seabourne-Taylor, Paralegal in the OIC's Hearings Unit, via the alternatives provided in Paragraph 7 above.

9. Public Comment. The public will have the opportunity to comment on the Form A. RCW 48.04.010(1) allows the Commissioner to "hold a hearing for any purpose within the scope of this code as he . . . may deem necessary." The Commissioner plans to schedule public forums on the Form A in different locations throughout the State of Washington. The public testimony at those public forums will be recorded and transcribed, and will be made a part of the administrative record. However, these public forums are not a part of the public adjudicative hearing (proceeding) conducted under RCW 48.31B.015(4)(b). In addition, the OIC is accepting comments through the mail and on its website.

10. Objections. Any objection to the provisions of this Order shall be filed within ten (10) days of the date of this Order, and sent to the attention of Dorothy Seabourne-Taylor, Paralegal in the OIC's Hearings Unit, via the procedures outlined in Paragraph 7 above. The filing of an objection does not automatically stay this Order.

11. Telephonic Status Conference.

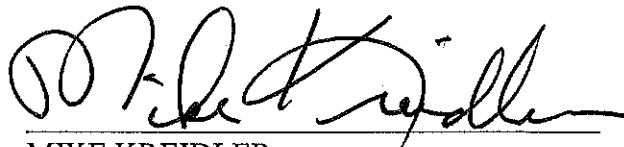
The parties to the above-referenced matter, Kaiser, Parent, GHC, GHO, and OIC Staff, through their counsel or representatives, shall be present for a telephonic status conference to be held on April 4, 2016, at 10:00 a.m., Pacific Time. The OIC's Hearing Unit will provide the call-in number for the teleconference to the parties' representatives prior to its occurrence. The parties should be prepared to discuss the following matters:

1. Whether the OIC Staff has issued data or information requests to Kaiser, Parent,

- GHC, or GHO, and if so, the nature and number of those requests;
2. The status of Kaiser, Parent, GHC, and GHO's responses to any requests;
  3. Plans of the OIC Staff, if known at this time, to issue data and information requests to Kaiser, Parent GHC, or GHO in the future; and
  4. Each parties' estimate of the time that each parties' experts will require to prepare written reports regarding the transaction proposed in the Form A.

By close of business on March 31, 2016, each party shall file a brief written report addressing items 1 through 4, and submit it to the OIC's Hearings Unit via the procedures outlined in Paragraph 7.

It is so **ORDERED** this 10 day of March, 2016.



MIKE KREIDLER,  
Washington State Insurance Commissioner

**PROOF OF SERVICE**

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

US Mail Postage Prepaid via Consolidated Mail Service

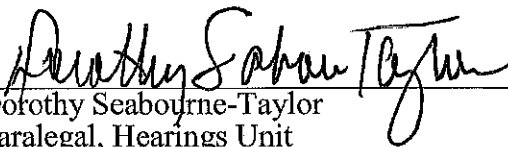
Via e-mail

State Campus Delivery

Hand delivered by \_\_\_\_\_

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 10<sup>th</sup> day of March, 2016, at Tim wate, WA.

  
\_\_\_\_\_  
Dorothy Seabourne-Taylor  
Paralegal, Hearings Unit

James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner  
Douglas A. Hartz, Deputy Commissioner, Company Supervision Division  
Steve Drutz, Chief Financial Analyst, Company Supervision Division  
Ronald J. Pastuch, Holding Company Manager, Company Supervision Division  
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division  
Darryl Colman, Staff Attorney, Legal Affairs Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

Robin L. Larmer  
Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101

Shawna M. Sweeney  
VP and Deputy General Counsel  
Group Health Cooperative  
320 Westlake Ave. N #100  
Seattle, WA 98109

Frank C. Miller  
Senior Counsel  
Kaiser Permanente  
One Kaiser Plaza, 19<sup>th</sup> Fl.  
Oakland, CA 94612

Marta DeLeon, Assistant AAG  
Isaac Williamson, Assistant AAG  
Attorney General's Office  
1125 Washington Street SE  
PO Box 40100  
Olympia, WA 98504-0