

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

In the Matter of: )  
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 PREMERA BLUE CROSS CONVERSION )  
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 R 03-07 )  
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Order No. 6 - Regarding  
 Consultants' Reports and  
 Form A Hearing Schedule

**Background**

On December 17, 2003, Premera Blue Cross (PBC) and the division staff filed a joint status report that included a proposed schedule and procedure for hearing on PBC's Form A. The director held a status conference on December 22, 2003 to discuss and ask questions about the proposed hearing schedule. At the status conference, the persons granted amicus status in this proceeding were given until December 29, 2003 to submit written comments on the proposed schedule. An amicus group of University of Alaska, Anchorage Neighborhood Health Center, United Way of Anchorage, and John Garner filed written comments with the director on December 29, 2003.

On January 7, 2004, PBC filed with the director its expert reports with a cover letter indicating that the reports were marked confidential and proprietary and not for public disclosure. PBC subsequently filed a Motion to Seal Expert Reports.

On January 8, 2004, counsel for the director was informed by the parties that they planned to file with the director a revised proposed schedule in light of scheduling changes in Washington. As yet, a revised proposed schedule has not been filed with the director. The director also has reviewed the Washington Commissioner's Twenty-Fourth Order regarding the Alaska intervenors efforts in the Washington proceeding to use the Alaska division's consultant reports in that proceeding. This order invites the Alaska director to inform the Washington commissioner through a written statement of any information the Alaska Division of Insurance believes the Washington commissioner should be aware of in considering Premera's proposed conversion.

## **Discussion**

As I relayed to the parties in the December 23, 2004, I am concerned about the protracted nature of this proceeding. While the magnitude of the proposed conversion has warranted a detailed and thorough review of all aspects of the transaction, I believe every effort should be made to ensure that PBC's Form A statement with amendments and the DOI's related review process will be completed soon. I recognize that the absence of a scheduling order in Alaska may have left the parties with uncertainty on how the matter would proceed in Alaska. I hope to cure some of that uncertainty with this order. I also want to ensure that Alaska's consultant reports are produced well in advance of any hearing for review by me, the amici curiae (amici), and the public. My goal is to allow ample time to digest the material and to prepare for hearing given the competing work priorities I face over the next several months. I also want the amici and the public to have ample time to digest the reports and to prepare meaningful comment or testimony at hearing.

Further, I believe it may be in Alaska's interest to share information from its consultants' reports with the Washington commissioner and/or his staff given the overlap of issues between the Washington and Alaska proceedings. To that end, I will give consideration to Commissioner Kriedler's invitation in his Twenty Fourth Order to submit in writing information that I think he should be aware of in considering PBC's proposed transaction. I will extend the same invitation to the Washington commissioner. I anticipate that the process for providing any written statement in the Washington proceeding will involve the DOI staff providing recommendations to me regarding information that should be included in a statement with opportunity for objection or comment by PBC or amici.

### **a. Consultant Reports**

At this time, I am most concerned about the release of Alaska consultant reports. I understand from the joint status report that the division staff has shared preliminary consultant reports with Washington's OIC staff and that Premera has shared Attorneys' Eyes Only and Confidential versions of these reports to Alaska intervenors who also are amici in this proceeding. I further understand that division staff was to make corrections and produce redacted versions of the Alaska consultants' preliminary reports to Premera by December 23, 2003. For purposes of the Form A proceedings, I will deem those corrected reports as "final" with respect to the Form A currently on file with the division. In doing so, I am not invoking the exam report procedures in AS 21.06, which I suspended in a prior order. The term "final" is intended to identify a document that is no longer a "draft" or "preliminary." I recognize that the Alaska consultants will be preparing supplemental reports based on amendments to PBC's Form A statement. These supplemental reports also will be deemed final after corrections have been made to the reports.

Under this order, I am directing DOI staff to submit to me the Alaska consultant reports on PBC's current Form A filing in both unredacted and redacted form within seven days of this order. Within this timeframe, I also am directing the DOI staff to make available to the public the redacted versions of these reports, by posting them on the DOI web site. On January 7, 2004,

PBC filed its expert reports subject to a pending motion to seal to these reports to protect confidential information. I would like redacted versions filed with me and made public within the same timeframe. Similarly, this order sets deadlines for filing and public release of the supplemental reports.

With respect to redactions, I would expect that any information contained in Alaska's or PBC's consultant reports that has been made public in Washington will be public in this state. If the parties cannot reach agreement regarding a redaction or proposed redaction, then the matter should be presented to me for decision. Notwithstanding the agreement of the parties, I reserve the right to independently consider whether a particular redaction is appropriate or whether it is in the public interest to release previously redacted information.

I do not object to attempts by the Alaska intervenors to use the Alaska consultant reports in the Washington proceeding, particularly public versions of the reports. But I do not agree to the formal discovery in the form of consultant depositions with respect to these reports as is being conducted in Washington. At least under Alaska law, I do not believe due process requires this kind of formal discovery particularly in absence of a showing of good cause. In this proceeding, the parties have agreed to informal interviews regarding each side's consultant reports, which should provide sufficient opportunity for the parties to prepare for hearing. Because the Form A hearing involves a public process, I will allow amici to observe the informal interviews, except for that portion of an interview dealing with information that is not public. The parties should structure the informal interviews in a way that facilitates such observation. I am not expressly granting amici the right to ask questions at these informal interviews, but the parties are free to consider in advance of the interviews whether or to what extent they might entertain questions.

#### **b. Hearing Process**

I am scheduling the Form A hearing under AS 21.22 for the week of June 7, 2004 with a final decision on the proposed conversion set for July 25, 2004. Based on the prior joint proposal of PBC and DOI staff regarding the timing for hearing and decision in this matter, I have assumed that PBC is waiving any requirement under AS 21.22.030(b) to hold a hearing and render a decision to approve or disapprove the proposed conversion within 60 days of the filing of a completed Form A statement. Amendments to PBC's current Form A statement that the DOI staff previously deemed incomplete are expected to be filed on February 5, 2004. If PBC objects to the dates set in this order for hearing and decision as being outside the timeframe allowed under AS 21.22.030(b), then it should file with the director an objection in writing that includes the legal basis for the objection by no later than February 11, 2004.

As I have indicated in an earlier order, I intend to hold public hearings in conjunction with the Form A hearing, which will be held either immediately before or after the Form A hearing itself. During the Form A hearing itself, I will set aside time each day for public comment or testimony. I expect that the Form A hearing will last two to three days based on the parties' hearing proposal. I also agree with the parties proposal to use prefiled testimony with the caveat that each person for whom prefiled testimony is used will present live testimony at

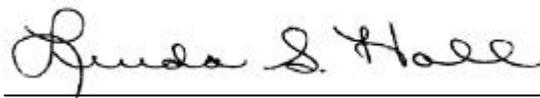
hearing and subject to additional examination by a party or the director. Prehearing scheduling deadlines are included in this order. In a later order, I will further clarify the specific procedures that will be followed at hearing.

THEREFORE, IT IS HEREBY ORDERED:

1. The DOI staff shall submit to the director all of the Alaska consultant reports related to PBC's current Form A application in unredacted and redacted form within seven days of the date of this order. The redacted reports will be placed on the DOI web page.
2. PBC shall submit to the director redacted versions of the expert reports previously filed with the director within seven days of the date of this order. These redacted reports also will be placed on the DOI web page.
3. The Form A hearing under AS 21.22 is set for the week of June 7, 2004. Public hearings will be held that same week in conjunction with the Form A hearing.
4. In addition to paragraphs 1 and 2, the following schedule will apply:

February 5, 2004	PBC's amendments to its Form A statement filed with AK DOI staff
February 11, 2004	PBC's objection, if any, to the dates for hearing and decision filed with the director
February 27, 2004	AK DOI consultants' supplemental reports on amended Form A submitted to PBC
March 4, 2004	Redactions/corrections to AK DOI consultants' supplemental reports
March 8, 2004	PBC's supplemental reports submitted to AK DOI
March 12, 2004	Redactions/corrections of PBC's supplemental reports
March 19, 2004	Submit AK DOI and PBC supplemental reports to director in unredacted and redacted forms; redacted supplemental reports posted on AK DOI web site
March 22-26, 2004	Interviews of both parties' expert consultants;
April 12, 2004	Filing of pre-filed direct testimony
April 28, 2004	Filing of pre-filed rebuttal testimony
May 1, 2004	Notice of Form A hearing and public hearings
June 7-11, 2004	Form A hearing and public hearings
June 25, 2004	Close of Evidence, Filing of proposed findings/conclusions, deadline for written public comment
July 25, 2004	AK Director's Decision

Dated: January 26, 2004



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Linda S. Hall  
Director