

STATE OF MAINE
DIRIGO HEALTH AGENCY

RE: DETERMINATION OF) DIRIGO HEALTH AGENCY'S
AGGREGATE MEASURABLE) MOTION FOR ORDER REQUIRING
COST SAVINGS FOR THE) MORE SPECIFIC DISCLOSURE
FOURTH ASSESSMENT YEAR) OF TESTIMONY
(2009))

The Dirigo Health Agency (“DHA”) hereby moves for an order requiring Intervenors Maine State Chamber of Commerce (“the Chamber”) and Anthem Health Plans of Maine, Inc. (“Anthem”) to provide more specific disclosure of expert testimony and of testimony by Anthem witness Geoffrey Green. Additionally, DHA requests that the Board clarify its Procedural Order of June 24, 2008, to require the same level of disclosure for Intervenor Maine Association of Health Plans (MEAHP) expert Jack E. Burke.

By Order dated May 20, 2008, the Board required Intervenors to disclose their witnesses no later than June 23, 2008, including a summary of the testimony to be presented by each witness. On June 23, 2008, Intervenors filed their disclosures. However, the summaries of testimony for the four experts designated by Intervenors were woefully inadequate to give DHA notice of their expected testimony. Moreover, the Chamber provided no summary whatsoever for one of its witnesses, Geoffrey Green.

To its credit, MEAHP stated in its disclosure that it would provide an expert report for MEAHP witness Jack P. Burke. The June 24, 2008, Order requires MEAHP to file this report no later than July 9, 2008.

The Chamber and Anthem Have Provided Inadequate Disclosure

As mentioned above, the Chamber provided no summary of the expected testimony of Geoffrey Green and thus clearly violated the May 20, 2008, Order. Furthermore, the Chamber

provided a mere two sentence summary of its expert witness's testimony. Here is the Chamber's summary in its entirety:

It is anticipated that Dr. Dobson will testify that the proposed CMAD and BD/CC methodologies (and their resulting savings estimates) are not reasonable because, *for example*, they do not take into account all relevant variables that influence cost growth or uninsured rates in the absence of Dirigo Health. In addition, it is anticipated that Dr. Dobson will testify that the proposed CMAD and BD/CC methodologies overlap and double count savings.

(Chamber Disclosure at 3 (emphasis added).) Since we are only provided with an example of Dr. Dobson's opinions, we are left to wonder what other opinions he intends to offer. We also are left to wonder what "relevant variables" he believes were omitted, how the methodologies overlap, or what basis there is for any of these opinions. This lack of disclosure stands in stark contrast to the 83-page expert report produced by DHA, along with all of the supporting data and worksheets.

Anthem's expert disclosure is similarly meager. Both of its experts, William Whitmore and Vincent Maffei, are expected to provide "analysis and commentary on the methodology proposed by the DHA for determination of aggregate measureable costs savings in the fourth assessment year." (Anthem Disclosure at 4.) This discloses nothing other than that Anthem expects their testimony to be relevant. We know nothing about their opinions or the bases for their opinions.

More Specific Disclosure Is Warranted

Disclosure helps each party prepare for the hearing, allows for efficient presentation of evidence, and ultimately assists the Board in determining aggregate measurable cost savings. DHA has provided detailed disclosure of its witnesses' opinions and the bases for those opinions. If Intervenors were to do the same, it would allow DHA to analyze the views of Intervenors' experts, concede points where Intervenors' experts were correct, and provide the Board with a well-thought-out response where Intervenors' experts were not correct – all of which would

benefit the Board's decision-making. By concealing the work of their experts, Intervenors can only make the Board's task more difficult.

In Year 3, the Board required all parties to provide expert reports meeting the requirements of Rule 26 of the Maine Rules of Civil Procedure. (Procedural Order of June 21, 2007, at 2.) DHA's expert disclosure this year meets those requirements. Requiring Intervenors to do the same would treat the parties equitably, provide clear guidance to Intervenors, and assist the Board in making its determination efficiently and accurately.

WHEREFORE, DHA respectfully requests that the Board issue an order requiring Intervenors to file and serve expert disclosures meeting the requirements of Rule 26(b)(4)(A)(i) of the Maine Rules of Civil Procedure on or before 3:00 p.m. on July 9, 2008, for each of their expert witnesses and requiring the Chamber to file and serve a summary of the testimony of Geoffrey Green on or before the same time.

Dated: June 26, 2008

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RE: DETERMINATION OF)
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Upon consideration of the Dirigo Health Agency's Motion for Order Requiring More Specific Witness Disclosure and any filings in opposition thereto, the Motion is GRANTED. No later than 3:00 p.m. on July 9, 2008, Intervenors shall file and serve expert disclosures meeting the requirements of Rule 26(b)(4)(A)(i) of the Maine Rules of Civil Procedure for each of their expert witnesses, and the Chamber shall file and serve a summary of the testimony of Geoffrey Green.

IT IS SO ORDERED.

_____, 2008

William H. Laubenstein, III, Hearing Officer
Dirigo Health Board