

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE )  
MEASURABLE COST SAVINGS )  
DETERMINED BY DIRIGO )  
HEALTH FOR THE FIRST ) SECOND PROCEDURAL ORDER  
ASSESSMENT YEAR )  
)  
)  
Docket No. INS-05-700 )

Pursuant to section VII of the September 19, 2005 Procedural Order, Bureau staff met with the parties on October 5, 2005 in response to requests to address procedural matters. In furtherance thereof, the Superintendent issues this Second Procedural Order.<sup>1</sup>

1. Presentation of Witnesses. Parties shall present witnesses on an individual basis and not in a panel format.

2. Witness Designation. No later than 12:00 noon on October 14, 2005, each party shall make a filing identifying each person it will call as a witness at hearing, together with a summary of the substance of what each witness will be testifying about.

3. Subpoena Requests. Parties shall coordinate with one another to accommodate the attendance and testimony of witnesses and the production of evidence relating to issues of fact in the proceeding. To the extent agreement cannot be reached, the deadline for requesting issuance of a subpoena by the Superintendent is set at 12:00 noon on October 17, 2005. Such subpoenas are governed by Maine law, including but not limited to 24-A M.R.S.A. §§ 232, 233; 5 M.R.S.A. § 9060; and Insurance Rule Chapter 350(12).

4. Hearing Briefs. The parties may file hearing briefs no later than 9:00 a.m. on October 24, 2005. Any such brief shall be no more than 15 pages, double space, font size minimum of 12.

5. Order of Presentations. On each issue, Dirigo will go first as the moving party, followed in order by Consumers for Affordable Health Care, the Maine State Chamber of Commerce, Anthem Health Plans of Maine, Inc. d/b/a/ Anthem Blue Cross and Blue Shield and the Maine Association of Health Plans consolidated to the extent possible, and Maine Automobile Dealers Association Insurance Trust and the Bankers Health Trust collectively.

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<sup>1</sup> The deadlines set in paragraph numbers 2, 3, and 4 of this Second Procedural Order were those dates proposed by the Maine State Chamber of Commerce (with input by Anthem Maine), the Maine Association of Health Plans, and favorably incorporated by the Maine Automobile Dealers Association Insurance Trust and the Bankers Health Trust on October 4, 2005; discussed and agreed upon by the parties at a weekly meeting with Bureau staff on October 5, 2005; and for which the Superintendent's counsel provided e-mail Written Notice to all parties on October 7, 2005.

6. Consolidation and Coordination. Consistent with orders on intervention, the Maine Association of Health Plans and its member, Anthem Maine, shall consolidate the presentation of evidence and argument; other intervenor parties with similar interests shall coordinate with each other to avoid duplication of efforts. Any barriers to the consolidation or coordination by and/or among parties will be addressed by the Superintendent as necessary on a case-by-case basis at hearing. The Maine Automobile Dealers Association Insurance Trust and the Bankers Health Trust are a single party for purposes of this proceeding.

7. Public Comment. The Superintendent does not anticipate taking public comment at the hearing.

8. Order of Proceeding. The Superintendent anticipates the following order of subjects for the conduct of the public hearing:

- Hospital Savings Initiatives, including consolidated operating margins (COM) and cost per case mix-adjusted discharge (CMAD). *See* pp. 10-14 of the September 19, 2005 Final Report by Mercer entitled Dirigo Health Savings Offset Payment (SOP): Methodology and Calculations (the "Mercer Report"); Attachment 11 of Dirigo's September 19, 2005 filing.
- Uninsured Savings Initiatives, including uninsured reduction of bad debt (BD) and charity care (CC), and woodwork (WW) effect. *See* pp. 19-22 of the Mercer Report.
- Health Care Provider Fee Savings Initiatives, including hospital fee initiatives and physician fee initiatives. *See* pp. 26-28 of the Mercer Report.
- Certificate of Need and Capital Investment Fund Savings Initiatives, including certificate of need (CON) moratorium and capital investment fund (CIF). *See* pp. 23-25 of the Mercer Report.
- Insurance Carrier Savings Initiatives, including voluntary underwriting gain (VUG). *See* pp. 15-18 of the Mercer Report.

9. Conduct of Proceeding. The Superintendent will exercise his authority liberally to secure the just, speedy, and economic determination of all matters pending before him in this proceeding and to prevent repetition or unreasonable delay in the proceeding. *See* Insurance Rule Chapter 350(2)(B), 350(13)(C); 5 M.R.S.A. § 9057(2). The parties are advised that time limits may be imposed by the Superintendent at hearing as deemed necessary to fulfill his legal and regulatory responsibilities. *Id.* In anticipation that time limits are likely to be imposed, parties are advised to prepare and present their presentations and examinations of evidence and argument at hearing on the basis that time limitations will be imposed by the Superintendent.

10. Time Estimates. At the time of making pre-filing of testimony and exhibits on October 21, 2005, parties shall provide the Superintendent with a good faith written estimate of

the time for presentation of their direct case, if any, as well as their good faith written estimate of the time for cross-examination.

11. Legal Standard; Record; Burden of Proof. The parties were provided until 3:00 p.m. on October 7, 2005 to submit positions on the applicable legal standard to be applied by the Superintendent in this proceeding. The Board of Directors of Dirigo Health, Consumers for Affordable Health Care, the Maine Association of Health Plans, Anthem Maine, and the Maine State Chamber of Commerce made filings; the Maine Automobile Dealers Association Insurance Trust and the Bankers Health Trust did not make a filing.

As stated in the Superintendent's June 29, 2005 Notice of Pending Proceeding and Hearing, this matter is being conducted as an adjudicatory proceeding in accordance with the provisions of the Maine Administrative Procedure Act, 5 M.R.S.A. chapter 375, subchapter IV ("APA"); 24-A M.R.S.A. §§ 229 to 236; and Bureau of Insurance Rule Chapter 350. Hearing Notice section IV. The legal standard established by the Legislature is that:

The superintendent shall approve the [Dirigo] filing upon a determination that the aggregate measurable cost savings filed by the board are reasonably supported by the evidence in the record.

P.L. 2005, ch. 400, § B-2(2)(B).

Pursuant to the APA, the Dirigo filing made with the Superintendent on September 19, 2005 is a part of the record in this proceeding. 5 M.R.S.A. § 9059(1)(A). Consistent with the APA, subject to limitations which have been or may be imposed by the Superintendent, every party shall have the right to present evidence and argument on all issues, to call and examine witnesses, and to make oral cross-examination of persons testifying. 5 M.R.S.A. § 9056(2); Rule Chapter 350(13)(C).

This is an evidentiary proceeding upon which the Superintendent ultimately will issue an order approving, in whole or in part, or disapproving the Dirigo filing based on the evidence in the record of this proceeding as adduced at the hearing. P.L. 2005, ch. 400, § B-2(2)(B); 24-A M.R.S.A. § 235(3)(A). Dirigo, as the moving party, has the burden of proving that its determinations of aggregate measurable cost savings are reasonably supported by the evidence in the record of this proceeding (Docket No. INS-05-700).


The Superintendent interprets "reasonably supported by the evidence" to refer to the totality of the evidence and not to any part of the evidence taken out of context. However, "reasonably supported" is not a preponderance-of-the-evidence standard. If more than one alternative for determining aggregate measurable cost savings could be reasonably supported by the evidence, Dirigo does not have to prove that its chosen alternative is more reasonable or better supported than another alternative.

12. Hearing Days. Pursuant to the June 29, 2005 Notice of Pending Proceeding and Hearing and the September 19, 2005 Procedural Order, the public hearing will commence at 9:00 a.m. on October 24, 2005 for one day, is currently scheduled to recess and then reconvene at

9:00 a.m. on October 27, 2005. The Superintendent will also use October 28, 2005 as a hearing day, if necessary, and will otherwise advise the parties if there are any changes to this hearing schedule.

PER ORDER OF THE SUPERINTENDENT

Dated: October 11, 2005

  
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ALESSANDRO A. IUPPA  
Superintendent of Insurance