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**MINUTES OF THE MEETING OF
THE NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
September 10, 2002**

Directors Participating: Darrel Farkus (Oxford Health Insurance); Frank Giannattasio; Sandy Herman (Guardian); Sandi Kelly (Horizon Blue Cross Blue Shield of New Jersey); Vicki Mangiaracina (Department of Banking and Insurance); Mary McClure, Chair (Aetna); Lisa Yourman.

Others Participating: DAG Eleanor Heck (DOL); Wardell Sanders, Executive Director.

I. Call to Order

W. Sanders called the Board meeting to order at 10:03 a.m. W. Sanders announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State and on the Department web site in accordance with the Open Public Meetings Act. A quorum was present.

II. Public Comments

W. Sanders noted that he had received requests from representatives of CIGNA Healthcare and Fortis Insurance to address the Board.

John Pellecchia from the law firm of Riker, Danzig, Scherer, Hyland & Perretti and David Mannis from CIGNA introduced themselves. Mr. Pellecchia thanked the Board and indicated that his purpose in addressing the Board was to ask it to act on CIGNA's legal challenge to its 1996 assessment. He noted that the Board had issued three orders, No. 98-01, No. 98-02, and No. 98-03 and noted that the Board had deferred the legal issues until the Administrative Law Judge issued a decision with

respect to the factual issues transmitted to the OAL as to whether CIGNA had marketed in good faith in 1996. He also asked the Board to follow the reasoning of the Appellate Division in In the Matter of the New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1.1 et seq., and conclude that the second tier assessment in 1996 was also invalid.

D. Mannis noted that CIGNA wanted to work with the State and the Board to address the future needs of the marketplace. He noted that he believed that CIGNA's dispute with the Board was not central to the functioning of the Program. He urged the Board to avoid continued litigation.

Sam Destito from the law firm of Windels, Marx, Lane & Mittendorf introduced himself and indicated he was representing Fortis Insurance. S. Destito noted that it was his understanding that Deloitte & Touche (D&T), the Board's auditor, took the position that reimbursement for losses should be based on the premium that a carrier should have earned based on its rate filing rather than on the actual premium earned. He noted that failure to file the charged rates should not impact a carrier's right to reimbursement. He contrasted the informational IHC rate filing and regulations with other statutory schemes in which carriers needed to obtain prior approval and then charge rates consistent with such filings. He further noted that to base reimbursement on the rates on file would be to speculate as to the losses that the carrier would have had if it had charged rates consistent with its informational filing. He indicated that if Fortis had increased the rates to consumers consistent with its filing, many of the contract holders might have canceled coverage.

III. Minutes

June 11, 2002

S. Kelly offered a motion to approve the draft minutes of the Open Session of the March 13, 2001 Board meeting, as amended. M. McClure seconded the motion. The Board voted in favor of the motion, with L. Yourman abstaining.

July 9, 2002

V. Mangiaracina offered a motion to approve the draft minutes of the Open Session of the March 13, 2001 Board meeting, as amended. L. Yourman seconded the motion. The Board voted unanimously in favor of the motion.

IV. Report of Staff

Expense Report

M. McClure offered a motion to approve the payment of the expenses shown on the August/September 2002 expense report. S. Kelly seconded the motion. The Board voted unanimously in favor of the motion.

Rule Adoption

S. Kelly offered a motion to adopt the Board's rule proposal to make the \$5,000 and \$10,000 deductible versions of Plan A/50 optional. D. Farkus seconded the motion. The Board voted unanimously in favor of the motion.

Basic and Essential Health Care Plan Rule Update

W. Sanders reported that staff and members of Department had met with a Legislative staffer regarding P.L.2001, c.368, a law requiring carriers in the individual market to offer a basic health benefits plan with benefits limited to those set forth in the law. He reported that the staffer was very helpful in providing information about the intent of P.L.2001, c.368.

Litigation Update

W. Sanders reported that on June 27, 2002, DAG Heck submitted a Notice of Petition for Certification in the litigation captioned In the Matter of the New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1.1 et seq. And a petition (i.e. a supporting brief) on July 19, 2002. He reported that CIGNA has filed a Cross Petition for Certification and a brief in support thereof. Lastly, he reported that the Appellate Division decision in this matter has been approved for publication, cited at 535 N.J. Super. 494 (APP.DIV. 2002).

2003 Meeting Schedule

W. Sanders reported that he had distributed copies of the draft 2003 annual meeting schedule. He asked Board members to provide any comments by the end of September.

Premium Audit Issue

W. Sanders reported that over the past few meetings the Board had been considering the issue of whether a carrier should be reimbursed based on premium that was actually earned or based on what the carrier should have earned based on its rate filings. He noted that the Board had voted at the July 2002 meeting but it was a deadlock.

M. McClure made a motion to have loss reimbursements be based on the premium actually earned and not on the amounts that the carriers had filed with the IHC Board. V. Mangiaracina seconded the motion. The Board took a roll call vote:

<i>L. Yourman:</i>	<i>no</i>
F. Giannattasio:	no
D. Farkus:	yes
V. Mangiaracina:	yes
M. McClure:	yes
S. Kelly:	no
S. Herman:	no

The motion failed.

Mr. Destito, from the audience, asked the Board to identify regulations that require a carrier to actually charge the rates as of the date that they indicate in their rate filing that would support the Board's position. S. Herman noted that because the prior filed rates were more than 12 months old, the maximum duration permitted in the regulation, the premium rates contained in the more recent filing were the only rates that legally could have been charged. The Board indicated that further discussion on this issue would occur.

V. Report of TAC

Rate Filings

S. Kelly said that TAC considered five rate filings.

L. Yourman offered a motion to accept the recommendation from TAC and find the filing from Aetna Life as complete. D. Farkus seconded the motion. The Board voted in favor of the motion, with M. McClure abstaining.

M. McClure offered a motion to accept the recommendation from TAC and find the filing from AmeriHealth as complete. S. Herman seconded the motion. The Board voted unanimously in favor of the motion.

M. McClure offered a motion to accept the recommendation from TAC and find the filing from Health Net as complete. V. Mangiaracina seconded the motion. The Board voted in favor of the motion, with S. Herman abstaining.

D. Farkus offered a motion to accept the recommendation from TAC and find the filing from Horizon as complete. F. Giannattasio seconded the motion. The Board voted in favor of the motion, with S. Kelly abstaining.

L. Yourman offered a motion to accept the recommendation from TAC and find the filing from Oxford as complete. S. Herman seconded the motion. The Board voted in favor of the motion, with D. Farkus abstaining.

VI. Report of the Operations Committee

Annual Statement Reporting Issues

W. Sanders reported that the Committee considered a memorandum from the Department that gave some informal advice regarding certain annual statement reporting issues. Set forth below are the issues and the responses from the Department and Board discussion.

- a. Is premium earned by a carrier after an IHC policyholder moves out of New Jersey reportable premium on the carrier's New Jersey annual statement blank? According to the Department, health premiums collected in New Jersey should be reported for the time period the policyholder lives in New Jersey, while health premium collected in another state should be reported in that other state.
- b. How should a carrier report interest penalties for failing to pay a claim in a timely fashion under prompt pay legislation? According to the Department, penalties should be reported as general expenses, not claims.
- c. How should a carrier report a New York surcharge for a claim associated with a New Jersey resident covered under an IHC plan who receives services in New York? According to the Department, New York surcharges should be reported as general expenses, not as claims. W. Sanders noted that both Trustmark and Celtic had written to the Board asking the Board or the Department to reconsider. Some Board members asked the Department to reconsider this issue noting that these surcharges are paid by patients regardless of whether they are insured or not. V. Mangiaracina indicated that the Department would consider this issue further.
- d. Would the settlement costs in connection with litigation with a subscriber be reportable as a "claim"? According to the Department, settlement costs in connection with litigation with a subscriber should be reported as general expenses, not claims.

M. McClure reported on the status of the 1997/1998 and 1999/2000 audits and agreed upon procedures from reports prepared by Deloitte & Touche and discussed by the Operations Committee.

VII. First Executive Session

W. Sanders said the Board had to receive advice from counsel and to consider matters relating to pending or anticipated litigation and asked for a motion to begin Executive Session.

S. Herman offered a motion that the Board begin Executive Session. F. Giannattasio seconded the motion. The Board voted in favor of beginning Executive Session.

VIII. Additional Business

S. Kelly offered a motion to advise CIGNA that the Board did not believe that the Appellate Division decision in In the Matter of the New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-11.1 et seq. applied to the 1996 assessment period and that release of the disputed funds on that basis was not appropriate. L. Yourman seconded the motion. The Board voted unanimously in favor of the motion.

J. Pellecchia, from the audience, requested that the Board also vote on CIGNA's legal challenges to its 1996 assessment that the Board had deferred in previous orders.

S. Herman offered a motion to have the Board remove from a segregated account those funds that represent the non-disputed portion of United States Life's 1999/2000 assessment payment. M. McClure seconded the motion. The Board voted unanimously in favor of the motion.

S. Herman made a motion that the Board instruct its auditors to calculate all carriers' reimbursable losses based on the rates filed for the applicable period. A roll call vote was taken.

L. Yourman:	yes
F. Giannattasio:	yes
D. Farkus:	no
V. Mangiarancina:	no
M. McClure:	no
<i>S. Kelly:</i>	<i>yes</i>
S. Herman:	yes

S. Destito, from the audience, asked that the Board specifically identify under what authority it had entered executive session and on what legal authority it was basing its decision. M. McClure noted that the Board believes that it has sufficient authority under applicable law to take the action that it did.

M. McClure announced that as Chair and on behalf of the Board she had signed an Order providing the Board with an extension of time in which to issue a final decision

in the matter relating to the factual issues relating to CIGNA's 1996 good faith marketing.

J. Pellecchia, from the audience, asked what circumstances existed that warranted the Board issuing an order extending the time period for a final order.

IX. Second Executive Session

L. Yourman offered a motion that the Board begin Executive Session for the purpose of discussing a matter relating to present litigation. S. Herman seconded the motion. The Board unanimously voted in favor of beginning Executive Session.

X. Final Business and Close of Meeting

The Board discussed with J. Pellecchia the status of the Board's two pending orders relating to CIGNA's 1996 assessment and its good faith marketing efforts. M. McClure read from the Extension Order the Board's basis for seeking an extension of time in which to issue a final order.

S. Kelly offered a motion to adjourn the Board meeting. D. Farkus seconded the motion. The Board voted unanimously in favor of accepting the motion. The meeting adjourned.

**MINUTES OF THE MEETING OF
THE NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
October 8, 2002**

Directors Participating: Darrel Farkus (Oxford Health Insurance); Frank Giannattasio; Sandy Herman (Guardian); Sandi Kelly (Horizon Blue Cross Blue Shield of New Jersey); Vicki Mangiaracina (Department of Banking and Insurance); Mary McClure, Chair (Aetna); Eileen Shrem.

Others Participating: DAG Eleanor Heck (DOL); Ellen DeRosa, Deputy Executive Director.

I. Call to Order

E. DeRosa called the Board meeting to order at 10:00 a.m. E. DeRosa announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State and on the Department web site in accordance with the Open Public Meetings Act. A quorum was present.

II. Minutes

September 10, 2002

V. Mangiaracina offered a motion to approve the draft minutes of the Open Session of the September 10, 2002 Board meeting, as amended. S. Kelly seconded the motion. The Board voted in favor of the motion, with E. Shrem abstaining.

III. Report of Staff

Expense Report

S. Kelly offered a motion to approve the payment of the expenses shown on the October 8, 2002 expense report. S. Herman seconded the motion. The Board voted unanimously in favor of the motion.

E. Shrem noted the expense for DeptCor and the mailing of the Buyer's Guides. She asked that an insert be included in the Buyer's Guides to advise potential purchasers of the availability of the \$5,000 and \$10,000 Plan A/50 deductible options.

Basic and Essential Health Care Plan Rule Update

E. DeRosa reported that she had completed the drafting of regulations to implement the requirements of P.L. 2001, c. 368. She said W. Sanders was reviewing the draft and that it would next be sent to appropriate Committees. She said that carriers need to be in a position to offer the new plan in January 2003 and therefore the Board needs to propose the regulations quickly. The Board agreed to hold a special meeting on Tuesday, October 22, 2002 beginning at 8:30 a.m. for the purpose of discussing the specimen policy that was distributed to Board members during the September meeting and the regulations.

S. Kelly commented that given the limited nature of the coverage it might be prudent to include some sort of caveat on the face page of the specimen policy advising the consumer that it is a limited benefits plan.

IV. Report of the Legal Committee

V. Mangiaracina reported on the October 3, 2002 Legal Committee meeting. She said the Committee discussed several issues.

V. Mangiaracina said the Committee considered draft procedures to address public participation during Board meetings and noted that the committee would have further discussions on this issue before making a recommendation to the Board.

V. Mangiaracina said the Committee discussed whether a carrier that is withdrawing or has withdrawn from the individual market would be eligible to seek reimbursement for losses. She said the Committee asked staff to prepare a spreadsheet specifying information relative to carriers that have withdrawn and loss reimbursement status. She said the Committee would bring a recommendation to the Board at a later meeting.

V. Mangiaracina said the Committee considered whether the Board could limit, by regulation, the ability of a person who switches from non-HMO coverage to HMO coverage from switching back at times other than open enrollment. She reported that the Committee believed such a restriction would be permissible. S. Kelly suggested that while it is good to know that

restricting the movement back to HMO coverage is permissible, it would be wise to ask TAC to consider the movement issue to determine whether there is a reason for wanting to restrict the movement back to HMO coverage.

V. Report of the Operations Committee

M. McClure reported on the status of the 1997/1998 and 1999/2000 audits and agreed upon procedures from report prepared by Deloitte & Touche and discussed by the Operations Committee.

M. McClure noted that copies of letters W. Sanders sent to those carriers that had failed to provide the necessary information in connection with the agreed upon procedures audits were included in the Board packets. M. McClure explained that the Committee was considering what might be payable as reimbursement to carriers based on documentation that the carriers have been able to provide.

V. Mangiaracina reported that the Department reviewed information provided relative to the New York surcharges and believed that New Jersey should treat the surcharges as New York treats them. Thus, the surcharges should be treated as claims.

M. McClure said that while the Department had provided guidance on how to address premium for persons who have moved out of state, the Committee was now requesting guidance as to how to handle claims for persons who have moved out of state.

S. Herman reported that he recently attended an annual Valuation Actuaries meeting during which health related assessments were discussed. He said the conclusion was that these assessments should be treated as claims but he noted that this guidance was not yet in effect.

M. McClure said the Committee was reviewing some changes to Exhibit K reporting.

VI. Executive Session

E. DeRosa said the Board had to receive advice from counsel and to consider matters relating to pending or anticipated litigation and asked for a motion to begin Executive Session.

S. Kelly offered a motion that the Board begin Executive Session. V. Mangiaracina seconded the motion. The Board voted in favor of beginning Executive Session.

[Executive Session began: 11:00 a.m.]

VII. Close of Meeting

E. Shrem offered a motion to adjourn the Board meeting. S. Herman seconded the motion. The Board voted unanimously in favor of accepting the motion. The meeting adjourned.

**MINUTES OF THE MEETING OF
THE NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
October 22, 2002**

Directors Participating from 10th Floor Conference Room: Frank Giannattasio; Vicki Mangiaracina (Department of Banking and Insurance).

Directors Participating from Other Locations Via Teleconference: Sandy Herman (Guardian); Sandi Kelly (Horizon Blue Cross Blue Shield of New Jersey); Mary McClure, Chair (Aetna); Eileen Shrem; Amy Wallace (Oxford Health Insurance); Lisa Yourman.

Others Participating: DAG Eleanor Heck (DOL); Ellen DeRosa, Deputy Executive Director; Wardell Sanders, Executive Director.

I. Call to Order

W. Sanders called the Board meeting to order at 8:38 a.m. W. Sanders announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State and on the Department web site in accordance with the Open Public Meetings Act. Since some Directors were participating via teleconference from other locations, he called roll. A quorum was present.

Recognizing that some Directors were participating from other locations, W. Sanders asked that all Directors identify themselves when speaking.

II. Discussion of Rule Proposal

W. Sanders said that the purpose of the meeting was to discuss a draft rule proposal intended to address two issues: the requirements of P.L. 2001, c. 368, including the filing requirements of a basic and essential health care services plan; and the filing requirements and report form for the report known as Exhibit K.

Exhibit K

W. Sanders directed the Board's attention to revised Subchapter 8 and the revised Exhibit K report form of the draft proposal. He noted that N.J.A.C. 11:20-8.1 to -8.4 largely address the completion of Exhibit K. W. Sanders noted that the draft text of Exhibit K and accompanying worksheets includes definitions from the regulation to facilitate the completion of the report.

The Board discussed the reporting of claims paid and premium earned and how the numbers should be adjusted by the carrier when Exhibit K is submitted and how the numbers could be further adjusted in the audit process.

P.L. 2001, c. 368

The Board discussed the statutory requirement that carriers market the basic and essential health care services plan in good faith.

The Board noted that carriers are permitted to file riders to amend the basic and essential health care services plan. The draft regulation addresses the nature and extent of the riders, noting that riders that could lead to adverse selection will not be approved pursuant to the statute.

The Board agreed that it should develop general information on the basic and essential health care services plan that can be used by agents who would be selling the plan.

The Board agreed that the specimen policy form for the basic and essential health care services plan should be proposed as an appendix exhibit in the regulations with the opportunity for persons to comments on the text of the plan.

The Board discussed an individual's ability to replace a standard plan with a basic and essential health care services plan and vice versa and concluded that movement

from the basic and essential health care services plan should be limited to the open enrollment period.

III. Executive Session

W. Sanders said the Board needed to enter into Executive Session to receive advice from counsel regarding the draft rules related to the marketing of the basic and essential health care services plan.

L. Yourman offered a motion to begin executive session. M. McClure seconded the motion. By roll call vote the Board voted in favor of the motion.

[Executive Session: 9:30 a.m. – 9:45 a.m.]

IV. Close of Meeting

E. Shrem offered a motion to adjourn the Board meeting. L. Yourman seconded the motion. The Board voted unanimously in favor of accepting the motion. The meeting adjourned at 9:45 a.m.

**MINUTES OF THE MEETING OF
THE NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
October 28, 2002**

Directors Participating from 10th Floor Conference Room: Frank Giannattasio; Vicki Mangiaracina (Department of Banking and Insurance); Mary McClure, Chair (Aetna).

Directors Participating from Other Locations Via Teleconference: Carmel Colica (Oxford Health Insurance); Ulysses Lee (Guardian); Sandi Kelly (Horizon Blue Cross Blue Shield of New Jersey); Eileen Shrem.

Others Participating: DAG Eleanor Heck (DOL); Ellen DeRosa, Deputy Executive Director; DAG Heather Leibowitz (DOL); Wardell Sanders, Executive Director.

I. Call to Order

W. Sanders called the Board meeting to order at 2:23 p.m. W. Sanders announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State and on the Department web site in accordance with the Open Public Meetings Act. Since some Directors were participating via teleconference from other locations, he called roll. A quorum was present.

Recognizing that some Directors were participating from other locations, W. Sanders asked that all Directors identify themselves when speaking.

II. Purpose of Meeting

W. Sanders said that one purpose of the meeting was to discuss a draft rule proposal intended to address two issues: the requirements of P.L. 2001, c. 368, including the filing requirements for a basic and essential health care services plan; and the filing requirements and report form for the report known as Exhibit K. W. Sanders said the second purpose for the meeting was to discuss a final decision in a matter brought by CIGNA against the IHC Program Board.

III. Executive Session A

W. Sanders said the Board needed to enter into Executive Session to receive advice from counsel regarding the draft rules related to P.L. 2001, c. 368 and amendments to the Exhibit K filing requirements.

M. McClure offered a motion to begin executive session. E. Shrem seconded the motion. By roll call vote the Board voted in favor of the motion.

[Executive Session: 2:15 p.m. – 2:58 p.m.]

IV. Discussion of Draft Rule Proposal

Board members commented on the rate filing and marketing requirements.

V. Executive Session B

W. Sanders said the Board needed to enter into Executive Session to receive advice from DAG E. Heck regarding the draft rules related marketing of the basic and essential health care services plan pursuant to P.L. 2001, c. 368 and advice from DAG H. Leibowitz regarding the CIGNA appeal.

M. McClure offered a motion to begin executive session. E. Shrem seconded the motion. By roll call vote the Board voted in favor of the motion.

[Executive Session: 3:21 p.m. – 3:43 p.m.]

VI. Final Business and Close of Meeting

CIGNA Appeal

M. McClure introduced this matter, reviewed the initial decision and asked DAG H. Leibowitz to explain the standard by which the Board must make the final decision. DAG H. Leibowitz explained that the Administrative Law Judge (ALJ) issued an initial decision regarding the CIGNA appeal and that the Board could accept, modify or reject the decision. She said ALJ Fidler determined that CIGNA did not comply with the Good Faith Marketing requirement. She explained that an agency could reject the findings of the ALJ if the agency were to believe the decision to have been arbitrary or unreasonable or if the agency believed that the ALJ failed to perform a thorough and accurate review of the information presented.

S. Kelly offered a motion to adopt the initial decision of the ALJ, in its entirety. E. Shrem seconded the motion.

In discussing the motion, V. Mangiaracina stated that she agreed with the conclusion that CIGNA's marketing efforts did not meet the good faith marketing requirements set forth in the Board's regulation. She also said that based on her review of the record she saw no reason to overturn the factual findings made by the ALJ. She further noted that CIGNA raised some legal issues as to disparate treatment, and that those issues were outside the scope of the issues transmitted to the Office of Administrative Law. She noted, however, that she did not believe CIGNA's equal protection rights were violated, nor did she view Prudential and CIGNA as being similarly situated.

By roll call vote the Board voted on the motion. The Board voted unanimously in favor of the motion.

DAG H. Leibowitz said the Board's final decision would be filed on or before October 31, 2002.

Proposed Regulations

The Board discussed the proposed provision regarding good faith marketing of the basic and essential health care services plan. The Board agreed that carriers must include the plan on the application, and that if a carrier has a marketing piece that identifies all product offerings, the basic and essential health care services plan must be listed. In addition, carriers must demonstrate at least one additional effort geared toward the marketing of the basic and essential health care services plan.

M. McClure offered a motion to propose the draft regulations, with comments as provided and with comments as subsequently provided by the Attorney General's Office and Governor's Counsel. V. Mangiaracina seconded the motion. By roll call vote the Board voted unanimously in favor of the motion, with S. Kelly noting that she believed the good faith marketing requirements associated with the basic and essential health care services plan were onerous.

M. McClure offered a motion to adjourn the Board meeting. E. Shrem seconded the motion. The Board voted unanimously in favor of accepting the motion. The meeting adjourned at 4:08 p.m.

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THE NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
November 12, 2002**

Directors Participating: Darrel Farkus (Oxford Health Insurance); Frank Giannattasio; Sandy Herman (Guardian); Sandi Kelly (Horizon Blue Cross Blue Shield of New Jersey); Vicki Mangiaracina (Department of Banking and Insurance); Mary McClure, Chair (Aetna); Lisa Yourman.

Others Participating: DAG Eleanor Heck (DOL); Ellen DeRosa, Deputy Executive Director; Wardell Sanders, Executive Director.

I. Call to Order

W. Sanders called the Board meeting to order at 10:05 a.m. W. Sanders announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State and on the Department web site in accordance with the Open Public Meetings Act. A quorum was present.

II. Request to Address the Board

W. Sanders said he received a call on Friday, November 8, 2002 from John Pellecchia of Riker, Danzig, Scherer, Hyland & Perretti, LLP, (Riker, Danzig) outside counsel for CIGNA requesting the opportunity to address the Board. W. Sanders said he received a letter from J. Pellecchia via hand delivery later that afternoon. A copy of the November 8, 2002 letter was provided to Board members.

Richard Hamilton of Riker, Danzig asked to address the Board. The Board heard his comments.

Mr. Hamilton acknowledged the Board's final decision that was issued on October 28, 2002 concerning the factual issues that had been transmitted to the Office of Administrative Law (OAL) regarding the 1996 assessment. He asked when the Board would be addressing the legal issues that were not considered in the OAL hearing. He noted that the final decision issued on October 28, 2002 did seem to address one legal issue.

W. Sanders said it was not the intention of the IHC Board to address the legal issues during the Board meeting on November 12, 2002. Rather, the Board would schedule and appropriately give notice of a separate meeting during which the legal issues would be considered.

Mr. Hamilton indicated that the Board had dealt with one legal argument in its decision regarding marketing. He further noted that the Appellate Division decision addressed the second tier assessment and found it to be invalid. He asserted that the IHC Program is holding over \$9 million of funds that are due to be returned to CIGNA.

W. Sanders said that the November 8, 2002 letter had been hand-delivered Friday afternoon. The following Monday was a State holiday; thus Friday was the workday immediately prior to the Board meeting date. He noted that Riker Danzig previously provided letters to the Board close to the Board meeting dates. W. Sanders noted that such timing does not allow the Board an ample opportunity to address issues raised in letters submitted so close in time prior to the scheduled Board meeting.

Mr. Hamilton asked W. Sanders to confirm that the Board would not be deciding the legal issues CIGNA raised during the Board meeting that day. W. Sanders confirmed that the Board would not be deciding the legal issues during Open Session.

III. Minutes

October 8, 2002

V. Mangiaracina offered a motion to approve the draft minutes of the Open Session of the October 8, 2002 Board meeting, as amended. S. Kelly seconded the motion. The Board voted in favor of the motion, with L. Yourman abstaining.

October 22, 2002

S. Kelly offered a motion to approve the draft minutes of the Open Session of the October 22, 2002 Board meeting. S. Herman seconded the motion. The Board voted in favor of the motion, with D. Farkus abstaining.

October 28, 2002

The Board deferred voting on the minutes until after Executive Session.

IV. Report of Staff

Temporary Staff Assistance

W. Sanders introduced Loretta Curry to the Board and stated she was assisting with responding to consumer inquiries. Since she previously worked for a carrier and handled IHC and SEH matters he said she brought good background and experience.

Expense Report

S. Herman offered a motion to approve the payment of the expenses shown on the November 12, 2002 expense report. D. Farkus seconded the motion. The Board voted unanimously in favor of the motion.

Eagleton Institute

W. Sanders said the Eagleton Institute was conducting a survey of boards throughout State government. He encouraged Board members to participate in the survey.

Audit Update

W. Sanders said the Operations Committee had not been able to meet prior to the Board meeting. A copy of the Open Items list prepared by Deloitte & Touche (D&T) was included in Board materials. W. Sanders called the Board's attention to Protective Life. D&T was performing agreed upon procedures for 1997/1998 losses. Protective Life has stated that it cannot provide any information that would be responsive to the open items D&T has raised. As a result, D&T cannot issue an agreed upon procedures report. W. Sanders said the Operations Committee would meet to develop a recommendation to the Board on how to proceed. He noted that for the 1997/1998 calculation period the Board had paid approximately 80% of the requested loss amount to carriers.

Basic and Essential Health Care Plan Rule Update

W. Sanders said the Governor's Counsel gave approval for the Board to file its rule proposal with the Office of Administrative Law (OAL). Since the Board would be following its statutory special rulemaking procedure, the 60-day comment period would be measured from the date the proposal is filed with the OAL.

W. Sanders said a red-lined version of the section dealing with net investment income was included in Board materials. He noted that it incorporated the clarifications set forth in Advisory Bulletin 99-IHC-02.

The Board discussed the timing of carrier filings for the policy form for the basic and essential health care services plan. In light of the fact that the earliest date the Board could take action on a policy form filing would be after the date by which carriers must file the policy form for approval, the Board agreed to issue a Bulletin to address some of the timing issues associated with the offer of the new plan. W. Sanders said he would draft a Bulletin and distribute for comments.

V. Report of the Technical Advisory Committee

S. Kelly said the TAC reviewed three rate filings. She said the Committee recommendation was to find each of the filings complete. The vote for each filing was 4–0.

L. Yourman offered a motion to accept the TAC recommendation and find the Aetna HMO rate filing complete. F. Giannattasio seconded the motion. The Board voted in favor of the motion with M. McClure abstaining.

M. McClure offered a motion to accept the TAC recommendation and find the AmeriHealth HMO rate filing complete. F. Giannattasio seconded the motion. The Board voted unanimously in favor of the motion.

V. Mangiaracina offered a motion to accept the TAC recommendation and find the CIGNA HMO rate filing complete. L. Yourman seconded the motion. The Board voted unanimously in favor of the motion.

VI. Executive Session

W. Sanders said the Board had to review prior Executive Session minutes, receive advice from counsel, and consider matters relating to pending or anticipated litigation and asked for a motion to begin Executive Session.

S. Herman offered a motion that the Board begin Executive Session. F. Giannattasio seconded the motion. The Board voted unanimously in favor of beginning Executive Session.

[Break: 10:47 a.m. – 10:55 a.m.]

[Executive Session: 10:55 a.m. – 12:12 p.m.]

VII. *Final Business and Close of Meeting*

October 28, 2002 Minutes

F. Giannattasio offered a motion to approve the draft minutes of the Open Session of the October 28, 2002 Board meeting, as amended. V.

Mangiaracina seconded the motion. The Board voted in favor of the motion, with L. Yourman abstaining.

2003 Meeting Schedule

The January meeting will be held on January 16, 2003. The July meeting will be held on July 31, 2003.

Telephone Conference Meeting

The Board agreed to meet via teleconference to consider the CIGNA legal issues. W. Sanders announced that the date, time and location of the meeting would be noticed in accordance with the requirements of the Open Public Meetings Act.

L. Yourman offered a motion to adjourn the Board meeting. D. Farkus seconded the motion. The Board voted unanimously in favor of accepting the motion. The meeting adjourned at 12:18 p.m.

**MINUTES OF THE MEETING OF
THE NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
November 25, 2002**

Directors Participating from 10th Floor Conference Room: Frank Giannattasio; Vicki Mangiaracina (Department of Banking and Insurance).

Directors Participating from Other Locations Via Teleconference: Darrel Farkus (Oxford Health Insurance); Sandy Herman (Guardian); Sandi Kelly (Horizon Blue Cross Blue Shield of New Jersey); Mary McClure, Chair (Aetna), Eileen Shrem; Lisa Yourman.

Others Participating: DAG Eleanor Heck (DOL); Ellen DeRosa, Deputy Executive Director; Wardell Sanders, Executive Director.

I. Call to Order

W. Sanders called the Board meeting to order at 11:07 a.m. W. Sanders announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State and on the Department web site in accordance with the Open Public Meetings Act. Since some Directors were participating via teleconference from other locations, he called roll. A quorum was present.

Recognizing that some Directors were participating from other locations, W. Sanders asked that all Directors identify themselves when speaking.

II. Purpose of Meeting

W. Sanders said that one purpose of the meeting was to discuss a draft Advisory Bulletin intended to address implementation of the Basic and Essential Health Care Services plan required by P.L. 2001, c. 368. W. Sanders said the second purpose for the meeting was to discuss a draft Administrative Order in a matter brought by CIGNA against the IHC Program Board regarding the 1996 loss assessment.

III. Executive Session

W. Sanders said the Board needed to enter into Executive Session to receive advice from counsel regarding the draft Advisory Bulletin and the Administrative Order.

E. Shrem offered a motion to begin executive session. F. Giannattasio seconded the motion. By roll call vote the Board voted unanimously in favor of the motion.

[Executive Session: 11:12 a.m. – 11:35 a.m.]

V. Discussion of Draft Advisory Bulletin

W. Sanders said the Legal Committee discussed the draft Advisory Bulletin and recommended some changes which were shown as red-lined in the draft that was distributed to the Board.

In response to an inquiry from E. Shrem, E. DeRosa explained that the Board proposed an amendment to the standard application to include the Basic and Essential Health Care Services plan on the application along with the other plans that are available in the IHC market. E. Shrem expressed concern that a consumer might purchase the Basic and Essential Health Care services plan without fully understanding the limited nature of the coverage.

L. Yourman offered a motion that the Board release the Advisory Bulletin, 02-IHC-01, subject to any changes that may be requested by counsel. S. Herman seconded the motion. By roll call vote the Board voted unanimously in favor of the motion.

VI. Discussion of IHC Administrative Order No. 02-06

W. Sanders said the draft Administrative Order responds to two appeals brought by CIGNA and related companies. In October the Board issued an Administrative Order that addressed factual issues CIGNA raised. The Board had reserved decision on the legal issues and those issues were the subject of draft Administrative Order 02-06.

V. Mangiaracina shared her understanding of the events that led up to the Administrative Order that was before the Board. She noted that the current Administrative Order referred to two previously issued Administrative Orders, 98-01 and 98-02.

V. Mangiaracina said Administrative Order No. 98-01 addressed CIGNA's request for an exemption from the 1996 loss assessment. CIGNA's assigned minimum enrollment share for 1996 was 20,413 lives. Of that target number, CIGNA enrolled 5,553 non-group lives, or 27.2% of its minimum enrollment share. In order to qualify for an exemption CIGNA was required to demonstrate that it made a good faith effort to enroll its minimum number of non-group lives. CIGNA submitted documents that the Board reviewed. The Board concluded that CIGNA did not demonstrate that it had marketed the IHC plans in good faith and denied CIGNA's

request for an exemption. CIGNA challenged the Board's action, alleging both factual issues -- namely, that it did satisfy the requirements to market in good faith and should qualify for an exemption -- and legal issues -- namely, CIGNA asserted that the good faith marketing rule was arbitrary, capricious and contrary to public policy and the Board's denial of CIGNA's exemption request exceeded the Board's authority under the IHC Act. The Board referred the factual issues to the Office of Administrative Law (OAL) for a contested case hearing. The Administrative Law Judge (ALJ) concluded that CIGNA did not comply with the good faith marketing requirements in the Board's regulations. The Board agreed with the ALJ's conclusions and on October 28, 2002 the Board rendered its final decision concluding that CIGNA did not comply with the good faith marketing requirements. The Board reserved decision on the legal issues until the OAL matter was concluded. V. Mangiaracina noted that the legal issues were the issues to be addressed at this meeting.

V. Mangiaracina said that Administrative Order No. 98-02 addressed the manner in which the 1996 loss assessment was calculated considering CIGNA as a carrier not entitled to an exemption since CIGNA had not demonstrated that it marketed individual policies in accord with the Board's regulation. CIGNA's assessment bill was about \$9.5 million. CIGNA challenged the loss assessment by raising a number of legal issues. CIGNA raised the following legal issues: the 1996 assessment unlawfully exceeded the board's statutory authority and failed to follow the requirements of the IHC Act; CIGNA has a statutory right to an exemption for the coverage it wrote in the individual market; CIGNA has a statutory right to an assessment that was proportionate to its share of the market for all members; the Board's denial of the exemption and the adjustment of CIGNA's market share were

invalid because those acts were arbitrary, capricious and led to an unreasonable result; the good faith marketing regulation does not contain appropriate standards for carriers to follow; and the Board engaged in unlawful rulemaking with the assessment. Viewing the legal challenges as inextricably intertwined with the matter regarding the exemption that had been referred to the OAL, the Board had reserved decision on these legal issues until the OAL matter was concluded. V. Mangiaracina noted that those issues were also to be the subject of discussion during this meeting.

V. Mangiaracina continued by saying that in 1998 CIGNA separately challenged the Board's readoption with amendments of the IHC Program regulations. Among other things, in that appeal CIGNA challenged: the regulations that addressed good faith marketing and the second tier assessment, arguing that the regulations exceeded the Board's statutory authority and conflicted with the requirements of the IHC Act; that the requirements of the good faith marketing and the second tier assessment regulations were arbitrary, capricious and led to an unreasonable result; that the good faith marketing regulation failed to contain appropriate standards for carriers seeking to comply with it.

V. Mangiaracina noted that in May 2002 the Appellate Division rendered a decision which found that the good faith marketing regulation did not exceed the Board's rulemaking authority; was not arbitrary, capricious and unreasonable; and did contain appropriate standards. The Court also upheld the concept of a second tier assessment, but invalidated the specific mechanism for that assessment set forth in the 1998 regulations under which carriers entitled to partial exemptions were relieved from the second tier assessment liability. Both parties have submitted

petitions for certifications to the Supreme Court on different issues. Those petitions are still pending.

V. Mangiaracina concluded noting that as the representative from the Department sitting on the IHC Board she has carefully reviewed the pleadings in this matter and has given the case careful consideration. She said it is her opinion and that of the Department that most of the legal issues raised by CIGNA were disposed of by the Appellate Court decision regarding the Board's readoption of its regulations. The good faith marketing regulation did not exceed the Board's rulemaking authority; is not arbitrary, capricious or unreasonable; and the Board did provide appropriate standards for carriers seeking to demonstrate good faith marketing. The decision clearly stated that the Board has the authority to do a second tier assessment. With regard to the methodology for the second tier assessment for 1996, she said it appeared to her that there was sufficient authority for the Board to have calculated the second tier as it did. The Appellate Division's discussion of the repeal of section 12e of the statute was significant. While not an issue in the 1997/1998 appeal, the Appellate Division decision referred to the deleted language in section 12e of the law three times. In effect, there were material differences between the 1996 version of the law and the 1997/1998 version of the law as regards the assessment. She further noted the important policy reasons the Board considered in crafting the second tier assessment in the manner in which it was crafted, namely, encouraging carrier participation in the market. For all of these reasons, V. Mangiaracina said the Department would vote to deny the appeals raised by CIGNA.

S. Kelly began by stating that Horizon was a fully exempt carrier in 1996 and in fact enrolled greater than 100% of its minimum number of non-group lives. She said she

believed there was sufficient distinction between the law as it existed in 1996 as compared to 1997/1998, especially as regards the 1997 deletion of section 12e. She said she believed the Board acted appropriately and that the Board acted with full authority when it calculated the 1996 assessment in the manner in which it did. S. Kelly said she believed it appropriate for the Board to deny the legal challenged CIGNA raised.

M. McClure said that Aetna has been reviewing the good faith marketing rules in the event Aetna would have to demonstrate good faith marketing. She said Aetna found the rules to be perfectly clear as to what a carrier must do and submit.

S. Kelly offered a motion to issue IHC Administrative Order No. 02-05, with corrections to typographical errors, and thus deny the legal challenges raised by CIGNA. E. Shrem seconded the motions. By roll call voted the Board voted unanimously in favor of the motion.

VI. Close of Meeting

V. Mangiaracina offered a motion to adjourn the Board meeting. E. Shrem seconded the motion. By roll call vote the Board voted unanimously in favor of accepting the motion. The meeting adjourned at 11:58 a.m.

**MINUTES OF THE MEETING OF
THE NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
December 6, 2002**

Directors Participating from 10th Floor Conference Room: Frank Giannattasio; Vicki Mangiaracina (Department of Banking and Insurance).

Directors Participating from Other Locations Via Teleconference: Darrel Farkus (Oxford Health Insurance); Sandy Herman (Guardian); Sandi Kelly (Horizon Blue Cross Blue Shield of New Jersey); Mary McClure, Chair (Aetna), Eileen Shrem; Lisa Yourman.

Others Participating: DAG Eleanor Heck (DOL); Ellen DeRosa, Deputy Executive Director; Wardell Sanders, Executive Director.

I. Call to Order

W. Sanders called the Board meeting to order at 11:04 a.m. W. Sanders announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State and on the Department web site in accordance with the Open Public Meetings Act. He noted that this meeting was being held in addition to the meetings that were noticed on the annual meeting schedule for 2002. Since some Directors were participating via teleconference from other locations, he called roll. A quorum was present.

Recognizing that some Directors were participating from other locations, W. Sanders asked that all Directors identify themselves when speaking.

II. Purpose of Meeting

W. Sanders said the purpose for the meeting was to discuss a draft Administrative Order in a matter brought by CIGNA against the IHC Program Board regarding the 1996 loss assessment.

III. Executive Session

W. Sanders said the Board needed to enter into Executive Session to receive advice from counsel regarding litigation.

V. Mangiaracina offered a motion to begin executive session. E. Shrem seconded the motion. By roll call vote the Board voted unanimously in favor of the motion.

[Executive Session: 11:07 a.m. – 11:20 a.m.]

VII. Discussion of IHC Administrative Order No. 02-06

M. McClure stated that the IHC Board properly and accurately provided notice of the meeting the IHC Board held on November 25, 2002. She said that in light of the fact that counsel for CIGNA may have inadvertently been verbally provided with an incorrect start time for the November 25, 2002 meeting, the IHC Board would meet again to consider a draft Administrative Order responding to CIGNA's legal challenges regarding the 1996 loss assessment.

L. Yourman offered a motion to void the vote on the draft Administrative Order that the Board took during the November 25, 2002 meeting. E. Shrem seconded the motion. By roll call vote, the Board voted unanimously in favor of the motion.

W. Sanders said the draft Administrative Order responds to two appeals brought by CIGNA and related companies. In October the Board issued an Administrative Order that addressed factual issues CIGNA raised. The Board had reserved on the legal issues and those issues were the subject of the draft Administrative Order.

V. Mangiaracina shared her understanding of the events that led up to the Administrative Order that was before the Board. She noted that she was not a Board member until 2002 and thus was not previously involved with any of the matters CIGNA raised. As a result, she said she had to go back to review the pertinent documents. She noted that the current Administrative Order referred to two previously issued Administrative Orders, 98-01 and 98-02.

V. Mangiaracina said Administrative Order No. 98-01 addressed CIGNA's request for an exemption from the 1996 loss assessment. CIGNA enrolled 27.2% of its minimum enrollment share. In order to qualify for an exemption CIGNA was required to demonstrate that it made a good faith effort to enroll its minimum number of non-group lives. CIGNA submitted documents that the Board reviewed. The Board concluded that CIGNA did not demonstrate that it had marketed the IHC plans in good faith and denied CIGNA's request for an exemption. CIGNA challenged the Board's action, alleging both factual issues namely, CIGNA asserted that it did satisfy the requirements to market in good faith and should qualify for an exemption and legal issues, namely, CIGNA asserted that the good faith marketing rule was arbitrary, capricious and contrary to public policy and the Board's denial of CIGNA's exemption request exceeded the Board's authority under the IHC Act. The Board referred the factual issues to the Office of Administrative Law (OAL) for a contested case hearing. The Administrative Law Judge (ALJ) concluded that CIGNA did not comply with the good faith marketing requirements in the Board's regulations. The Board agreed with the ALJ's conclusions and on October 28, 2002 the Board rendered its final decision concluding that CIGNA did not comply with the good faith marketing requirements. The Board reserved decision on the legal issues until the

OAL matter was concluded. V. Mangiaracina noted that the legal issues were the issues to be addressed at this meeting.

V. Mangiaracina said that Administrative Order No. 98-02 addressed the manner in which the 1996 loss assessment was calculated considering CIGNA as a carrier not entitled to an exemption since CIGNA had not demonstrated that it marketed individual policies in accord with the Board's regulation. CIGNA's assessment bill was about \$9.5 million. CIGNA challenged the loss assessment by raising a number of legal issues. CIGNA raised the following legal issues: the 1996 assessment unlawfully exceeded the board's statutory authority and failed to follow the requirements of the IHC Act; CIGNA has a statutory right to an exemption for the coverage it wrote in the individual market; CIGNA has a statutory right to an assessment that was proportionate to its share of the market for all members; the Board's denial of the exemption and the adjustment of CIGNA's market share were invalid because those acts were arbitrary, capricious and led to an unreasonable result; the good faith marketing regulation does not contain appropriate standards for carriers to follow; and the Board engaged in unlawful rulemaking with the assessment. Viewing the legal challenges as inextricably intertwined with the matter regarding the exemption that had been referred to the OAL, the Board had reserved decision on these legal issues until the OAL matter was concluded. V. Mangiaracina noted that those were the issues that were to be the subject of discussion during this meeting.

V. Mangiaracina continued by saying that in 1998 CIGNA also raised a separate challenge to the Board's readoption with amendments of the IHC Program regulations. Among other things, in that appeal CIGNA alleged: that the regulations

that addressed good faith marketing and the second tier assessment exceeded the Board's statutory authority and conflicted with the requirements of the IHC Act; that the requirements of good faith marketing and the second tier assessment regulations were arbitrary, capricious and led to an unreasonable result; that the good faith marketing regulation failed to contain appropriate standards for carriers seeking to comply with it.

V. Mangiaracina noted that in May 2002 the Appellate Division rendered a decision in that separate appeal which found that the good faith marketing regulation did not exceed the Board's rulemaking authority; was not arbitrary, capricious and unreasonable; and did contain appropriate standards. The Court also upheld the concept of a second tier assessment, but invalidated the specific mechanism for that assessment set forth in the 1998 regulations under which carriers entitled to partial exemptions were relieved from the second tier assessment liability. Both parties have submitted petitions for certifications to the Supreme Court on different issues. Those petitions are still pending.

V. Mangiaracina concluded by noting that as the representative from the Department sitting on the IHC Board she has carefully reviewed the pleadings in this matter and has given the case careful consideration. She said it is her opinion and that of the Department that most of the legal issues raised by CIGNA were disposed of by the Appellate Court decision regarding the Board's readoption of its regulations. The good faith marketing regulation did not exceed the Board's rulemaking authority; is not arbitrary capricious or unreasonable; and the Board did provide appropriate standards for carriers seeking to demonstrate good faith marketing. The decision clearly stated that the Board has the authority to do a second tier assessment. The

Appellate Division's discussion of the repeal of section N.J.S.A. 17B:27A-12e was significant. While not an issue in the 1997/1998 appeal of the IHC Board's readoption with amendments, the Appellate Division decision referred to the repealed language in section 12e of the law three times. In effect, there were material differences between the 1996 version of the law and the law as amended by the Legislature in 1997 as regards the assessment. She further noted the important policy reasons the Board considered in crafting the second tier assessment in the manner in which it was crafted, namely, encouraging carrier participation in the market. For all of these reasons, V. Mangiaracina said the Department would vote to deny the appeals raised by CIGNA.

V. Mangiaracina offered a motion to issue IHC Administrative Order No. 02-05, and thus deny the legal challenges raised by CIGNA.

S. Kelly said she believed there was sufficient distinction between the law as it existed in 1996 as compared to 1997, especially as regards the 1997 repeal of section 12e. She said she believed the Board acted fairly and appropriately and that the Board acted with full authority when it calculated the 1996 assessment in the manner in which it did. S. Kelly said she believed it appropriate for the Board to deny the legal challenged CIGNA raised.

M. McClure said that Aetna has been reviewing the good faith marketing rules in the event Aetna would have to demonstrate good faith marketing. She said Aetna found the rules to be perfectly clear as to what a carrier must do and submit. She said

Aetna had no difficulty understanding what would be required of a carrier filing a good faith marketing report.

Rich Hamilton of Riker, Danzig, Scherer, Hyland & Perretti, counsel for CIGNA, asked for the opportunity to address the Board. The Board agreed.

R. Hamilton stated that with respect to the Appellate Division decision, since the second tier mechanism was invalidated all prior assessments were invalid. He said the Board should not continue to hold CIGNA's money that was collected under an invalid assessment. R. Hamilton questioned how a distinction could be made between 1996 and 1998. He said that it was his belief that if CIGNA had filed an appeal in the Appellate Division with regard to the 1996 mechanism he was confident the court would invalidate the 1996 mechanism. He noted that further litigation could be avoided if the Board were to agree to release the amount being held in a separate account today.

S. Kelly said the Board believes there is enough of a distinction between the law as it existed in 1996 as compared to 1998. She noted the removal of the provision that specified the 35% cap as one distinction. V. Mangiaracina noted that she recalled that the Appellate Division decision specifically stated that it applied only to the challenged regulation which took effect in 1998, after the 1996 assessment. V. Mangiaracina said she believed sufficient reasons have been articulated to distinguish the 1996 assessment from the 1997/1998 assessment.

L. Yourman seconded the motion made by V. Mangiaracina. By roll call vote the Board voted unanimously in favor of the motion.

W. Sanders advised counsel for CIGNA that the Administrative Order would be issued soon.

V. Close of Meeting

E. Shrem offered a motion to adjourn the Board meeting. F. Giannattasio seconded the motion. By roll call vote the Board voted unanimously in favor of accepting the motion. The meeting adjourned at 11:42 a.m.