

NEW JERSEY  
**INDIVIDUAL HEALTH COVERAGE PROGRAM**

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IN THE MATTER OF HEALTH NET'S  
REQUEST FOR AN EXEMPTION FROM  
LOSSES FOR THE 1999/2000 TWO-YEAR  
CALCULATION PERIOD

**ADMINISTRATIVE ORDER NO. 01-02**

WHEREAS, the New Jersey Individual Health Coverage Program (“IHC”) Board is authorized by the Individual Health Insurance Reform Act of 1992 (“IHC Act”), P.L. 1992, c. 161 (N.J.S.A. 17B:27A-2 et seq.), and regulations promulgated thereunder, to assess each member carrier of the IHC Program for its share of reimbursable losses of carriers in the individual market, based on the proportion that the member's net earned premium for the calculation period preceding the assessment bears to the net earned premium for all members of the IHC Program for that calculation period; and

WHEREAS, the IHC Board has promulgated regulations consistent with the IHC Act, set forth primarily at N.J.A.C. 11:20-2.17, to effectuate the intent of the Legislature to encourage carriers to enter the individual market and to provide for the fair and equitable distribution of reimbursable losses; and

WHEREAS, pursuant to N.J.S.A. 17B-27A-12a(1)(b) and N.J.A.C. 11:20-8, each IHC member carrier is required to submit, no later than March 1 subsequent to each calculation period, a Market Share and Net Paid Gain (Loss) Report (“Exhibit K”) for the previous calculation period, in which the Chief Financial Officer or other duly authorized officer of the member carrier, shall certify that the information about a carrier's net earned premium from all health benefits plans, non-group enrollment, and net paid gain or loss from community rated individual health benefits plans in Exhibit K was accurate, complete and conformed with requirements of N.J.A.C. 11:20-8; and

WHEREAS, pursuant to N.J.S.A. 17B:27A-12d and N.J.A.C. 11:20-9, each carrier-member is given the opportunity to earn an exemption from its reimbursable loss assessment obligation, in full or in part, by entering the individual health coverage market and prospectively agreeing to cover a minimum number of non-group person life years on an open enrollment, community rated basis assigned to it by the Board, which minimum number is based on the member carrier's market share from the previous two-year calculation period; and

WHEREAS, pursuant to N.J.A.C. 11:20-9.3(a), on or about May 1 of the first year of every two-year calculation period, the IHC Board shall issue to each member its minimum enrollment share of non-group persons for that two-year calculation period which the member must agree prospectively to cover in that two-year calculation period to obtain an exemption from the losses from that two-year calculation period; and

WHEREAS, pursuant to N.J.A.C. 11:20-9.2, carriers seeking to be exempted from the obligation to pay an assessment are required to submit a written request for such exemption to the Board on or before June 1 of the first year of each two-year calculation period; and

WHEREAS, due to problems with data contained in some of the member carriers' Exhibit K filings for the 1997/1998 two-year calculation period, the IHC Board was unable to issue a Notice of Minimum Enrollment Share for the 1999/2000 two-year calculation period by May 1, 1999 to give carriers 30 days in which to submit a written request for an exemption by June 1, 1999 for the 1999/2000 two-year assessment cycle; and

WHEREAS, Health Net Inc. (formerly Foundation Health Systems), and its affiliates Physicians Health Services of New Jersey and QualMed Plans for Health of New Jersey (hereinafter "Health Net"), is both a "carrier" and an "IHC member" as defined in the IHC Act; and

WHEREAS, on October 1, 1999 pursuant to N.J.A.C. 11:20-9.3, the IHC Board sent a Notice of 1999/2000 Minimum Enrollment Share and Preliminary Notice of 1997/1998 Loss Share ("October 1<sup>st</sup> Notice") via certified mail to Robert Little of Foundation Health Systems, and to all other member carriers, that advised, "[e]xemptions from assessment are only available to carriers actively offering standard individual health benefits plans in New Jersey. If you wish to apply for a conditional exemption for the two-year calculation period 1999/2000, you must submit a request to the Board, in accordance with N.J.A.C. 11:20-9.2, no later than November 1, 1999. Please send the request for exemption to the attention of Ellen DeRosa, Deputy Executive Director. Late requests will be denied; there will be no exceptions."; and

WHEREAS, the IHC Board has a delivery receipt from the United States Postal Service indicating that the October 1<sup>st</sup> Notice was received by Health Net on October 11, 1999; and

WHEREAS, the IHC Board has no record of receiving a request for an exemption from Health Net in response to the October 1<sup>st</sup> Notice; and

WHEREAS, due to revised filings of Exhibit K from some carriers after the issuance of the October 1<sup>st</sup> Notice, the IHC Board sent a 1997/1998 Assessment Invoice and Revised Notice of 1999/2000 Minimum Enrollment Share on November 17, 1999 ("November 17<sup>th</sup> Notice") via certified mail to Robert Little of Foundation Health Systems, and to all other member carriers; and

WHEREAS, the November 17<sup>th</sup> Notice clearly advised carriers that, "[a]ll requests for a conditional exemption for the 1999/2000 two-year calculation period have been VOIDED since the decisions of carriers that requested the exemptions were based on data that subsequently changed. Carriers that wish to apply for a conditional exemption for the two-year calculation period 1999/2000 based on the REVISED minimum enrollment share information must submit a request to the Board, in accordance with N.J.A.C. 11:20-9.2, no later than December 17, 1999. Please send the Exemption requests to the attention of Ellen DeRosa, Deputy Executive Director at the address above. Late requests will be denied; there will be no exceptions."; and

WHEREAS, the IHC Board has a delivery receipt from the United States Postal Service indicating that the November 17<sup>th</sup> Notice was received by Health Net on November 22, 1999; and

WHEREAS, the IHC Board has no record of receiving a request for an exemption from Health Net in response to the November 17<sup>th</sup> Notice; and

WHEREAS, due to revised filings of Exhibit K from some carriers after the issuance of the November 17<sup>th</sup> Notice, the IHC Board sent a 1997/1998 Interim Reconciliation Invoice Revised Notice of 1999/2000 Minimum Enrollment Share on June 23, 2000 ("June 23<sup>rd</sup> Notice") via certified mail to Robert Little of Foundation Health Systems, and to all other member carriers; and

WHEREAS, the June 23<sup>rd</sup> Notice specifically provided that "[s]et forth below is the REVISED Minimum Enrollment Share for 1999/2000. The IHC Board recognizes that some carriers have already requested a conditional exemption based on previously assigned Minimum Enrollment Shares. All exemption requests received as a result of the October 1, 1999 and November 17, 2000 notices of the Minimum Enrollment Share for 1999/2000 have been VOIDED. Any carrier that wishes to request a conditional exemption pursuant to N.J.A.C. 11:20-9.2(b) must make such request within 30 days of the date of this bulletin."; and

WHEREAS, the IHC Board has a delivery receipt from the United States Postal Service indicating that the June 23<sup>rd</sup> Notice was received by Health Net on June 29, 2000; and

WHEREAS, the IHC Board has no record of receiving a request for an exemption from Health Net in response to the June 29<sup>th</sup> Notice; and

WHEREAS, on March 7, 2001, Health Net filed its 1999/2000 Exhibit K, in which Health Net reported that it was filing as an "Exempt carrier"; and

WHEREAS, by letter dated June 6, 2001, Wardell Sanders, Executive Director of the IHC Board advised Health Net, that, among other things, the Board had no record of ever having received any Request for an Exemption for the 1999/2000 two-year

assessment period, and asked that Health Net provide any documentation in support of having sent such a request; and

WHEREAS, by letter dated June 12, 2001, Health Net requested an exemption for the 1999/2000 two-year assessment period and the 2001/2002 two-year assessment period; and

WHEREAS, by letter dated June 13, 2001 from Tom Messer, Director of Actuarial Services of Health Net, to Wardell Sanders, and by letter dated June 26, 2001 from Ivan Punctatz, Esq., counsel for Health Net for this matter, Health Net has advised the IHC Board that had not been able to find a copy of a written request for an exemption for the 1999/2000 two-year assessment period;

WHEREAS, the aforementioned June 13, 2001 letter from Tom Messer included an attachment of an email sent on June 21, 2000, from Tom Messer to Liz Guerin of Health Net, which provided the following: "Liz, Spoke with Ellen [DeRosa, Deputy Executive Director of the IHC Board]. We are exempt. However, some new info has come to the IHC Board about other carriers. This info will change the targets. Therefore, Ellen expects carriers to have to file again. A notice should be coming soon, but soon was not defined. Now I can sleep soundly. Thanks Tom."; and

WHEREAS, Ellen DeRosa has advised the IHC Board that she has no recollection of the aforementioned conversation; and

WHEREAS, the IHC Board has made the following determinations:

1. Health Net failed to submit a timely written request for an exemption for the 1999/2000 two-year period in response to the October 1<sup>st</sup> Notice; and
2. Health Net failed to submit a timely written request for an exemption for the 1999/2000 two-year period in response to the November 17th Notice; and
3. Health Net failed to submit a timely written request for an exemption for the 1999/2000 two-year period in response to the June 23rd Notice; and
4. Even if Ms. DeRosa had made the statements that Mr. Messer recorded in his e-mail, such oral statements would be irrelevant in determining whether Health Net submitted a written request for an exemption or in determining whether Health Net should be granted an exemption; and
5. Health Net's June 12, 2001 written request for an exemption for the 1999/2000 assessment cycle occurred after the close of the two-year calculation period and after the Exhibit K filings from all carriers, including those carriers seeking reimbursement, were due; and
6. Health Net's June 12, 2001 written request for an exemption for the 1999/2000 assessment cycle did not include all of the affirmative statements required by N.J.A.C. 11:20-9.2(a); and
7. The statutory provision for the loss assessment, N.J.S.A. 17B:27A-12, and the implementing regulations at N.J.A.C. 11:20-9.2, clearly require carriers in the individual market to elect in advance of the close of two-year cycle, and in advance

of knowledge of what the losses will be in the market, whether the carrier will seek an exemption from losses;

NOW THEREFORE, pursuant to the authority granted to the IHC Board by N.J.S.A. 17B:27A-2 et seq., N.J.A.C. 11:20-1 et seq., and all powers expressed or implied therein, and the decision of the IHC Board as expressed by this Administrative Order,

IT IS on this 13th day of August, 2001,

ORDERED that Health Net's request for an exemption from losses for the 1999/2000 two-year period is denied.

\_\_\_\_\_  
Wardell Sanders, Executive Director  
Individual Health Coverage Program Board

Date: \_\_\_\_\_