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Commissioner

IN THE MATTER OF THE CHALLENGE AND)
 REQUEST FOR HEARING BY GUARDIAN)
 LIFE INSURANCE COMPANY OF AMERICA)
 REGARDING THE NEW JERSEY INDIVIDUAL)
 HEALTH COVERAGE PROGRAM BOARD OF)
 DIRECTORS' ISSUANCE OF THE DECEMBER)
 18, 2006 INTERIM RECONCILIATIONS OF THE)
 1997/1998 AND 1999/2000 LOSS)
 ASSESSMENTS AND THE 2001/2002 LOSS)
 ASSESSMENT)

FINAL DECISION AND ORDER
 IHC AO No.: 07-IHC-01

This matter has been opened by the New Jersey Individual Health Coverage (“IHC”) Program Board of Directors (“Board”) pursuant to the authority of N.J.S.A. 17B:27A-2 et seq., and all the powers expressed or implied therein. This matter involves a challenge by the Guardian Life Insurance Company of America (“Guardian”), a member of the IHC Program, of the interim reconciliations of the 1997/1998 and 1999/2000 loss assessments and the 2001/2002 loss assessment issued by the IHC Board on December 18, 2006. For the reasons set forth below, the IHC Board denies the challenge and request for hearing.

Background

The IHC was created pursuant to N.J.S.A. 17B:27A-10 as part of the enactment of L. 1992, c. 161 (N.J.S.A. 17B:27A-2 et seq.) (the IHC Act), which was enacted to address a crisis in the availability of “individual” health coverage – that is, medical and hospital coverage for people not eligible to be insured under a group health insurance policy or Medicare. N.J.S.A. 17B:27A-2 (definition of “eligible person”). In order to increase availability of individual health coverage, the IHC Act provides two incentives for carriers to actively participate in the

IHC market by offering individual health benefits plans. First, the IHC Act permits a carrier that writes individual health benefits plans to seek reimbursement of certain losses the carrier incurs for the individual health benefits plans it writes (N.J.S.A. 17B:27A-12a(1)(b)). Those reimbursements are funded by assessments on members of the IHC Program. All carriers that have in force health benefits plans in New Jersey are IHC Program members, regardless of whether a carrier offers health benefits plans in the individual, small employer, and/or large employer markets.¹ All IHC Program members are liable for assessments for reimbursable losses incurred by carriers offering individual health benefits plans, but a carrier has the opportunity to earn at least a partial exemption if the carrier offers individual health benefits plans. The second incentive set forth in the IHC Act permits a carrier that writes individual health benefits plans in New Jersey to earn an exemption from liability for such loss assessments by enrolling an assigned number of individual lives. N.J.S.A. 17B:27A-12d.

The IHC Board promulgated regulations to implement the IHC Act, codified at N.J.A.C. 11:20. A provision of the rule governing the calculation of assessments was challenged in 1998, and eventually invalidated by the New Jersey Supreme Court pursuant to In re New Jersey Individual Health Coverage Program's Adoption of N.J.A.C. 11:20-1 et seq., 179 N.J. 570 (2004). The invalidated regulatory provision had provided that loss-assessments uncollected as the result of the grant of exemptions would be collected through a "second-tier" calculation apportioned among non-exempt carriers. Following the invalidation of that provision, the IHC Board adopted a new rule on December 18, 2006, establishing the "adjusted net earned premium" method used in the calculation of the distribution of the net paid losses among IHC

¹ A "member" of the IHC Program is "a carrier that issues or has in force health benefits plans in New Jersey. Member shall not include a carrier whose combined average Medicare, Medicaid, NJ FamilyCare and NJ KidCare enrollment represents more than 75% of its average total enrollment for all health benefits plans or whose combined Medicare, Medicaid, NJ FamilyCare and NJ KidCare net earned premium for the two-year calculation period represents more than 75% of its total net earned premium for the two-year calculation period." N.J.S.A. 17B:27A-2.

Program members. The adjusted net earned premium method provides for the distribution of the second tier among both non- and partially-exempt carriers. The new regulation applies to loss assessments for the 1997/1998 calculation period and subsequent periods.

At its meeting on December 5, 2006 IHC Board voted to issue assessment invoices and notices of interim reconciliations of the 1997/1998 and 1999/2000 loss assessments and to issue an initial loss assessment for the 2001/2002 calculation period. The invoices for 1997/1998 and 1999/2000 were interim reconciliations because the IHC Board had already issued loss assessments for those calculation periods. Because those loss assessments had been calculated using the methodology that the Supreme Court of New Jersey subsequently invalidated, it was necessary to re-calculate them using a new methodology.

Separate notices dated December 18, 2006 were issued for each calculation period: 1997/1998, 1999/2000, and 2001/2002. Each notice included an invoice. The notices of the interim reconciliations of the 1997/1998 and 1999/2000 loss assessments also explained the reasons for the interim reconciliations, and the manner in which the loss assessment shares had been re-calculated, including the application of the assessment methodology set forth in N.J.A.C. 11:20-2.17, effective and operative on December 18, 2006. The 2001/2002 loss assessment explained that the assessment methodology set forth in N.J.A.C. 11:20-2.17 and how the loss assessment had been calculated, based on the newly-promulgated regulation.

In accordance with N.J.A.C. 11:20-2.15 and -20.2, an IHC Program member may appeal the amount of an assessment within 20 days after receiving notice of the assessment. Guardian submitted a letter dated January 8, 2007 and supplemented it with a second letter, dated January 11, 2007, in response to the IHC Board's December 18, 2006 notices of interim reconciliations of the 1997/1998 and 1999/2000 loss assessments and notice of the 2001/2002 loss assessment.

The Challenger's Contention

In its January 8, 2007 letter, Guardian stated that “checks are being rendered – under protest -- as payment of the 1997/1998 and 1999/2000 interim reconciliation assessments and the 2001/2002 initial assessment.” Guardian further requested that the “full amount of these payments be held in escrow in an interest bearing account and not be disbursed to any carriers, pending the outcome of this challenge.”

Guardian contends that the Supreme Court's decision invalidating the previous methodology should have applied to periods prior to the 1997/1998 calculation period and that the IHC Board's action to apply different methodologies for different periods was arbitrary and inequitable. Guardian's January 11, 2007 letter requested an administrative hearing pursuant to N.J.A.C. 11:20-2.15 and 20.2. In both letters, Guardian acknowledged that the Supreme Court of New Jersey had invalidated the methodology that the IHC Board had previously used in calculating the 1997/1998 and 1999/2000 loss assessments.

Guardian's request for a hearing was limited “to the extent the Board makes any factual contention to justify the process it utilized in conducting the Interim Reconciliation Process other than the legal argument that the approach is (allegedly) mandated by statute.” Guardian did not set forth any disputed adjudicative facts, notwithstanding the requirement of N.J.A.C. 11:20-20.2(a)1iv that a request for hearing include “[a] concise statement listing the disputed adjudicative facts warranting a hearing and describing the basis for the member's contention that the Board's findings of fact are erroneous.”

Discussion

Although Guardian presents its challenge as a dispute of the December 18, 2006 interim reconciliations of the 1997/1998 and 1999/2000 loss assessments and loss assessment for

2001/2002, the IHC Board finds nothing in either of Guardian's letters that disputes either the methodology the Board employed in calculating those interim reconciliations and the assessment or the amounts Guardian was required to pay for any of these periods. Guardian's challenge is related solely to periods earlier than 1997, and those periods were not the subject of the December 18, 2006 interim reconciliations and loss assessment. Guardian contends that the methodology used to calculate the interim reconciliations and loss assessment as billed on December 18, 2006 is the methodology the IHC Board should employ. Guardian's objection is to the 1993, 1994, 1995 and 1996 loss assessments which are not the subject of the action the IHC Board took on December 18, 2006.

Because Guardian's protest recognizes that the Supreme Court of New Jersey invalidated the methodology that the IHC Board had originally used in calculating the 1997/1998 and 1999/2000 loss assessments it does not, and in fact cannot, contend that the IHC Board should have followed the invalidated methodology – or any other methodology than the one it actually followed – in calculating the liabilities that were set forth in the December 18, 2006, invoices. Therefore, Guardian does not actually challenge interim reconciliations of the 1997/1998 and 1999/2000 loss assessments or the 2001/2002 loss assessment. Because it sets forth no dispute to those loss assessments, its liability for the loss assessments cannot be under dispute. Therefore, the IHC Board finds that Guardian's request that the IHC Board hold the monies that Guardian paid to satisfy those liabilities be held in a segregated interest-bearing account is without merit.

Finally, because Guardian has not set forth any disputed adjudicative facts to support transmittal to O.A.L., see High Horizons Dev. Co. v. State, 120 N.J. 40 (1990), the IHC Board finds that a trial-type hearing is not warranted.

ORDER

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,

IT IS on this 13th day of February, 2007,

ORDERED that Guardian's challenge to the December 18, 2006 interim reconciliations of the 1997/1998 and 1999/2000 loss assessments and the 2001/2002 loss assessment is hereby denied; and

IT IS FURTHER ORDERED that Guardian's request for a hearing regarding the December 18, 2006, interim reconciliations of the 1997/1998 and 1999/2000 loss assessments and the 2001/2002 loss assessment is hereby denied; and

IT IS FURTHER ORDERED that Guardian's request that its payments be held in escrow in an interest bearing account is also hereby denied.

This Order constitutes a final agency decision and is effective immediately. Any appeals from this Order must be filed with the New Jersey Superior Court, Appellate Division, within 45 days from the date of service of the Order.

/s/ Mary Taylor, Chair 2/13/07
Individual Health Coverage Program Board